

The Commonwealth of Massachusetts

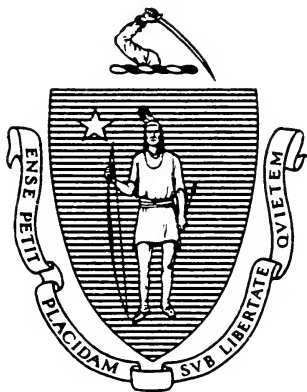
REPORT

OF THE

ATTORNEY GENERAL

FOR THE

Year Ending June 30, 1996



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COMMONWEALTH OF MASSACHUSETTS

In accordance with the provisions of Section 11 of Chapter 12 of the General Laws, I hereby submit the Annual Report for the Office of the Attorney General. This Annual Report covers the period from July 1, 1995 to June 30, 1996.

Respectfully Submitted,

Scott Harshbarger
Attorney General

Words of Remembrance for Assistant Attorney General Paul R. McLaughlin

Delivered by Attorney General Scott Harshbarger

St. Theresa of Avila Church, West Roxbury

September 30, 1995

One of my heroes -- one of our heroes -- died Monday night.

As it turns out, he was also my friend of 16 years, a loyal prosecutor for me since 1983, a democratic citizen and public servant in the truest sense. But above all, Paul McLaughlin was a role model. He lived his life for others. He was a gentleman who was also a gentle man. Paul was also the hero Reinhold Niebuhr described as a moral man struggling for justice in our immoral society.

He was a hero.

Ed and Cis, Ted, Bob, Ricky, Lisa and so many friends of Paul McLaughlin, distinguished guests: I am honored to join Ralph Martin in speaking this morning on behalf of all of you. Each of you -- the hundreds who are here whose life Paul touched -- could speak eloquently about your memories and your pain. So I hope you will join me, albeit in silence, and recall your memories of Paul as I offer you mine.

Maybe together we can somehow capture some of the essence of Paul as a person, a citizen and a public servant.

Paul was a very private person. He had a wide smile, a quick walk, a self-deprecating wit, tremendous personal energy and very strong convictions. But he also had a unique ability to listen and to get us to talk about ourselves or our concerns without asking anything for himself in return.

Paul was meticulous. Who else, in just one month this summer, could have summarized in interesting but precise paragraphs every single one of the 149 cases he had prosecuted for me in the past four and a half years?

Who else could have had all of the 60,000 "Dear Friend" cards for the Harshbarger campaign chronicled, filed and prepared in bags for bulk mailing by zip code two full weeks before the 1982 primary?

Paul was careful. Who else could drive from Lowell to Holliston on Route 495 with little time to spare and remain steadfastly at 50 miles per hour, believing you should stay just below the speed limit no matter what?

Paul was honest and fair. He was the anti-thesis of the hardbitten prosecutor. When he served as an assistant district attorney in Cambridge, judges often quietly dispatched court officers to find him and ask if he would help defendants who had appeared without counsel. They knew Paul's only goal was to seek justice.

Paul was tenacious. He came with me to the Attorney General's Office to be one of the founding prosecutors of the Urban Violence Strike Force. The creation of the Safe Neighborhood Initiative was slow and painstaking, but Paul passed on opportunities to try major white-collar cases or to enter private practice.

Thoreau spoke of lives led in quiet desperation. Paul led a life of quiet inspiration. No assistant I have ever been associated with in my years as a prosecutor tried more cases. And no one has been more successful, sensitive or ethical.

Yet, his greatest inner skill, I think, was that of being a friend. The friendship he shared was a treasured gift to us instilled in him by his loving parents and family. And for that, we thank them from the bottom of our hearts.

Paul was also a true democratic citizen. He had a profound understanding that democracy is not a birthright, but must be nurtured and guarded. He really seemed to consider citizenship an office. And because he believed democracy cried out for action and justice, Paul loved the law and he loved politics.

His work in both fields was not the stuff of bells and whistle, headlines, balloon drops or bumpersticker clichés. To him, true democracy was the basics -- exercising individual responsibility, putting talents to use for society, protecting the poor and the powerless, getting out the vote, supporting candidates you believed in, being loyal to friends, fighting fair.

His own run for office was probably one of his greatest internal contradictions. Here was a quiet, painfully shy person whose inner flame burned so bright that he felt the need to get up on the political stage at a time when few others cared.

Yet, at the same time, I will be forever in his debt for all the things he did for me. Like many others here this morning, I know that I hold the office I do because of Paul's belief in democracy. Without Paul McLaughlin at his side, how else could a guy named Harshbarger win Ward 20 in West Roxbury? And yet, with all I owed him, Paul asked only that he be allowed to be a public prosecutor in urban courts.

Ultimately, it was Paul's life in the law, as a public prosecutor, that will forever define him for so many of us gathered here today. Paul, in this way, blended his personal values and his professional skills.

He became an assistant district attorney for one very simple reason: He wanted to make our neighborhoods safer. He was a peaceful man who wanted peace in the streets. He did not want to get the bad guys as much as he wanted to protect the good guys.

It is important to understand that Paul chose to do what he did. He chose to prosecute the kind of nitty-gritty, unpublicized cases that make up 99 percent of the crimes that occur in our Commonwealth. He chose to be in the community courts, in the urban courts, where the Constitution is really played out everyday -- where, for the vast majority of victims, police officers, defendants and the community, justice is done or not done everyday.

Paul believed every neighborhood in this city and in this state could be like his beloved neighborhood of West Roxbury -- places for families, for workers, for children, for the elderly; places for the unsung among us to rest. People had a right to that and, as a prosecutor, Paul tried to make that right a reality.

In the last two and a half years of his life, Paul surely must have had a great sense of satisfaction. With Marcy Jackson, Captain Dunford and, more importantly, with the SNI residents, his work was truly making a difference in North Dorchester. Without headlines or fanfare, he was realizing the dream of every public prosecutor. He was getting at the causes of crime and violence, instead of dealing only with the tragedies at the end of the line.

He was happy seeing the changes he was making in the quality of people's lives. Crime was dropping; neighbors were taking back their streets; new businesses were starting. A sense of community was being revived. But there were still too many victims and, in one tragic act Monday night, Paul became one too.

God was in Paul, but Paul was, after all, only human. But he was a great human, and it is in that knowledge that I find some comfort in the words of the Beatitudes, in which Jesus defines the characteristics of greatness -- the characteristics that were Paul:

"Blessed are the meek, (the kind and the gentle), for they shall inherit the earth; Blessed are those who hunger and thirst for righteousness, for they shall be satisfied; Blessed are the merciful, for they shall obtain mercy; Blessed are the pure of heart, for they shall see God; Blessed are the peacemakers, for they shall be called the sons of God."

If there is a lesson or challenge that we can take from this tragedy, I believe it can be found in Paul's life -- not in his death only a few blocks from here. It is a lesson best captured by the poetic, ancient words of Matthew 5:14:

"You are the light of the world. A city set on a hill cannot be hid. Nor do man light a lamp and put it under a bushel, but on a stand and it gives a light to all in the house. Let your light so shine before men that they may see your good works and give glory to your father who is in heaven."

Paul McLaughlin's light shone bright everyday of his life. We saw it. We still feel its warmth. Let Paul's light inspire us to go forth with renewed dedication to public service, to the common weal and to the common good. Let his light shine in each of our actions, day in and day out, one person and one neighborhood at a time.

If we do not, the forces of darkness will claim the victory that Paul McLaughlin, a hero for our city and our state, was determined never to allow them to savor. If we let his light shine in us, if we all carry his life and memory in us in all we do, Paul will never die. He will live on in each of us, and his light will forever burn in our hearts, our minds and our lives.

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL
SCOTT HARSHBARGER

FIRST ASSISTANT ATTORNEY GENERAL

Thomas H. Green

CHIEF OF STAFF

Donald L. Davenport

Assistant Attorneys General:

Jonathan Abbott	Cynthia Berliner	R. Michael Cassidy
Richard Allen	William Berman	Pamela Castrucci 11
Dorothy Anderson	Ann Berwick 69	John Ciardi
Barbara Anthony	John Bigelow	Peter Clark
Luz Arevalo	Crispin Birnbaum	Jeffrey Clements 14
Frederick Augenstein	Edward Bohlen	Edward Colbert
Lori Balboni 21	Barbara Boden	Richard Cole
Thomas Barnico	John Bowen	Joanna Connolly
Jason Barshak 9	John Bowman	Scott Cooper
Judith Beals	Kevin Brekka	Pierce Cray
Thomas Bean	Douglas Brown	Phyllis Crockett Gallagher
John Beling 69	William Brownsberger	Michael Cullen
John Benzan	James Bryant 64	Maurice Cunningham
Steven Berenson 58	Brian Burke	William Daggett
Jean Berke 53	David Burns	Leslie Davies
Anne Berlin	Eric Carriker	Ed DeAngelo
Edward Berlin	James Caruso, Jr.	George Dean

Linda DelCastilho 4	Daniel Hammond	William Lee
Stephen Dick	Charles Harak 1	Judy Levenson 72
Carol Dietz 50	Nancy Harper	Martin Levin
Michael Dingle	Sarah Hartry	Darlene Luccio 18
Elizabeth DiTomassi	Katherine Hatch	Kara Lucciola 2
J. Leib Dodell	Bennet Heart	Anita Maietta
William Duensing	Michael Hering	David Marks 12
Deborah Ecker	Philip Holmes	William Matlack
Stanley Eichner	Audrey Huang	Laura Maslow-Armand
Judith Fabricant	Amy Hudspeth	Gregory Massing
Barbara Fain	Pamela Hunt	Thomas McCormick
Jennifer Ferreira	Marsha Hunter	Walter McDonough 53
Freda Fishman	Marcia Jackson	Karen McGuire
Francis Flaherty, Jr.	Diane Juliar	Kristin McIntosh
Elizabeth Ann Foley	Michelle Kaczynski	Gail McKenna
Mary Freeley	Judy Zeprun Kalman 16	Beth McLaughlin 14
Cynthia Gagne	Susan Kang	Paul McLaughlin
Rosemary Gale	Glenn Kaplan	William Meade
Rosalyn Garbose	Sean Kealy	Marianne Meacham
Susan Gilfix	Margaret Kelley 20	Elizabeth Medvedow
Salvatore Giorlandino	Stephanie Kelly	Joyce Meiklejohn
I. Andrew Goldberg	Carolyn Keshian	Howard Meshnick
Richard Gordon	Rosa Kim 7	Nicholas Messuri
Tania Gray 60	Michael Kogut 62	Holley Meyer
Thomas Green	Pamela Kogut	James Milkey 3
Leslie Greer	Pablo Landrau 63	Daniel Mitchell
Mary Griffin	Karen Laufer	Helen Moreschi 19
John Grossman 7	Andrew Lawlor 5	Christopher Morog
Irene Guild	Ellyn Lazar	Madelyn Morris
Kristin Guyot 55	Macy Lee	Susan Motika

Mark Muldoon	Joseph Rogers	Rosemary Tarantino
Robert Munnelly 67	Deirdre Rosenberg	Neil Tassel
Kathryn Murphy 56	Nina Ross 66	Shelly Taylor
Linda Murphy	Stuart Rossman	Jane Tewksbury
Mary Murphy-Hensley 6	Peter Sacks	Steven Thomas 8
Alexander Nappan 71	E. Selena Samm 7	Jean Thompson
Kevin Nasca	Ernest Sarason, Jr.	Edward Toro 70
Paula Fox Niziak	Pasqua Scibelli	Bruce Trager
Jean O'Brien	Arlie Scott	Margaret Van Deusen
Michelle O'Brien	Sharon Scott 13	Gina Walcott
Thomas O'Brien	Robert Sikellis	Lucy Wall
Donna Palermino	Jeremy Silverfine	Beverly Ward
William Pardee	Eleanor Sinnott 54	Rebecca Webb 59
Margaret Parks	Eric Smith 52	George Weber
Stephen Paterniti 22	Joanne Smith	Mark Weber
Robert Patten	Loretta Smith 17	Joseph Whalen, III
Anthony Penski	Mark Smith	James Whitcomb
Djuna Perkins	Johanna Soris	Douglas Wilkins
Mary Phillips	Leo Sorokin	Jane Willoughby
William Porter	Amy Spector	Howard Wise
Cristina Poulter 51	Susan Spurlock	John Woodruff
Anne Powers	Marie St. Fleur	Chi Chi Wu 23
Frank Pozniak	Carol Starkey	Edward Wu 10
Edward Rapacki 68	James Stetson	Norah Wylie
Carol Lee Rawn 59	Deborah Steenland	Kristine McMahon
Elizabeth Reinhardt	Walter Sullivan	Yanofsky 57
Shelley Richmond	Mark Sutliff	Judith Yogman
Benjamin Robbins	James Sweeney	Andrew Zaikis 61
Beverly Roby	Diane Szafarowicz	Catherine Ziehl
Anthony Rodriguez	Pamela Talbot	Michael Zullas

Assistant Attorneys General Assigned To The Department of Employment & Training:

David Breen 18

Stacey Bloom

Brian Burke

Joshua Krell

Philip McGovern 15

Glenn MacKinlay

Patricia Preziosa

Michelle Fontana 65

APPOINTMENT DATE

1. 07/03/95
2. 07/05/95
3. 07/13/95
4. 07/31/95
5. 08/14/95
6. 09/13/95
7. 09/18/95
8. 09/26/95
9. 10/02/95
10. 10/23/95
11. 11/01/95
12. 11/19/95
13. 12/11/95
14. 03/19/96
15. 03/25/96
16. 04/16/96
17. 04/22/96
18. 05/06/96
19. 05/12/96
20. 05/28/96
21. 06/03/96
22. 06/10/96
23. 06/18/96

TERMINATION DATE

50. 08/15/95
51. 08/16/95
52. 08/18/95
53. 08/31/95
54. 10/09/95
55. 10/18/95
56. 11/17/95
57. 12/12/95
58. 12/14/95
59. 12/15/95
60. 12/29/95
61. 01/08/96
62. 01/15/96
63. 02/23/96
64. 02/25/96
65. 03/01/96
66. 03/29/96
67. 04/19/96
68. 05/03/96
69. 05/17/96
70. 05/27/96
71. 05/31/96
72. 06/08/96
73. 06/25/96

DEPARTMENT OF THE ATTORNEY GENERAL

TRUSTS RECEIPTS AND DISURSEMENTS

Account	Account Name	Appropriation	Expenditures	Balance
08100033	Local Consumer Aid fund	\$1,593,339.78	\$1,164,421.55	\$428,918.23
08100034	Student Conflict Resolution Experts	\$157,117.28	\$235.00	\$156,882.28
	SCORE Adminatration			
08100036	Merger Central Mass Health Care,. Inc. and Healthcare, Inc	\$50,000.00	\$49,978.86	\$21.14
08100037	Merger Metrowest Medical Center and Columbia/HCA Healthcare Corp.	\$70,000.00	\$70,000.00	\$0.00
08100038	Fallon Healthcare/Ornda Health Care	\$125,000.00	\$110,000.00	\$15,000.00
08100301	Bluecross/Blueshield tobacco Litigation (MGL C. 125 4A)	\$601,000.00	\$8,832.02	\$592,167.98
08100414	Forfeired Funds (Ch 94 C, S.17)	\$171,717.00	\$146,554.62	\$25,162.38
08100415	Expendable Trust (Ch. 12,S.4a,6A)	\$82,281.59	\$0.00	\$82,281.59
08100416	conference and Training (Ch. 12, s.4a, 6a)	\$93,671.28	\$48,917.26	\$44,754.02
08100444	Forfeited Funds-Federal Equitable Sharing	\$126,390.07	\$121,006.01	\$5,384.06
08100526	Att. Gen. Unclaimed Minimum Wage Claims	\$1,275,974.83	\$1,024,292.82	\$251,682.01
08106614	Attorney General Trust Fund	\$80,732.18	\$0.00	\$80,732.18
08106656	Ford Foundation Grant (SCORE)	<u>\$84,954.00</u>	<u>\$36,004.34</u>	<u>\$48,949.66</u>
GRAND TOTAL		\$4,512,178.01	\$2,780,242.48	\$1,731,935.53

DEPARTMENT OF THE ATTORNEY GENERAL
STATEMENT OF THE FINANCIAL POSITION

Account	Account Name	Appropriation	Expenditures	Balance
0810-0000	Administration	\$13,901,256.00	\$13,854,907.52	\$46,348.48
0810-0014	Public Utilities Auth. by Ch. 1221 1973	\$1,335,209.00	\$1,322,334.03	\$12,874.97
0810-0017	Judicial Proceedings Relevant to the fuel charges	\$75,000.00	\$68,160.00	\$6,840.00
0810-0021	Medicaid Fraud Control Unit	\$1,263,151.00	\$1,245,844.14	\$17,306.86
0810-0031	Local Consumer Aid Fund	\$598,499.00	\$598,451.80	\$47.20
0810-0035	Anti-Trust Division Administraition	\$318,828.00	\$318,736.05	\$91.95
0810-0045	The Wage Enforcement Program	\$2,457,773.00	\$2,441,142.21	\$16,630.79
0810-0201	Insurance Auth. by Ch. 266, 1976	\$1,145,253.00	\$1,130,361.95	\$14,891.05
0810-0338	Auto Insurance Fraud by Ch. 338, 1990	\$200,000.00	\$198,965.64	\$1,034.36
0810-0399	Workers' Comp. Fraud by Ch. 399, 1991	\$368,602.00	\$362,822.61	\$5,779.39
0810-1031	Victim/Witness Assistance	\$117,499.00	\$117,425.60	\$73.40
0830-0100	Comm on Uniform State Laws, Admin. & Expenses	<u>\$27,900.00</u>	<u>\$27,894.18</u>	<u>\$5.82</u>
GRAND TOTAL		\$21,808,970.00	\$21,687,045.73	\$121,924.27

DEPARTMENT OF THE ATTORNEY GENERAL
INTERDEPARTMENTAL FUNDS AND FEDERAL GRANTS
STATEMENT OF THE FINANCIAL POSITION

Account	Account Name	Appropriation	Expenditures	Balance
08100020	Criminal Tax Unit Alloc. of 1201-0100 by Ch. 164, Acts of 88	\$123,750.00	\$123,750.00	\$0.00
08100022	Stop Violence against Women Act (Alloc of 8600-0020)	\$15,000.00	\$0.00	\$15,000.00
08100095	Student Conflict Resolution Experts	\$150,000.00	\$2,925.00	\$145,946.03
08100300	Enforcement of Smoking Related Laws Alloc. of 4590-0300	\$123,000.00	\$123,000.00	\$0.00
08100500	G.I.C. Benefit determinations Alloc. of 1108-5200	\$61,233.46	\$61,233.46	\$0.00
08106630	Water Pollution Control Program	\$6,759.88	\$0.00	\$6,759.88
08106631	Air Pollution Control Program	\$2,339.14	\$0.00	\$2,339.14
08106647	Hazardous Waste Enforcement Alloc of 2200-9704	\$7,500.00	\$6,598.13	\$901.87
08106652	Elder Abuse Alloc. of 8600-0009	\$32,839.00	\$30,784.90	\$2,054.10
08106654	SNi Commities First (Alloc. of 8600-0009)	\$341,314.00	\$341,313.97	\$0.03
08106655	SCORE Student Conflict Resolution Expert (Alloc. 8600-0009)	\$50,000.00	\$50,000.00	\$0.00
08106661	Coastal Zone Mmgt. Prgm. Implmt. (CZMPI)	\$2,693.47	\$0.00	\$2,693.47
08107843	Asbestos Property Litigation Alloc. of 1102-7843	\$17,066.99	\$0.00	\$17,066.99
08108817	NFA Project Litigation on Expenses Incurred by AGO (Alloc. 6033-8821) (88 C15,91 C33	\$200,675.00	\$127,951.04	\$72,723.96
08109081	AGO Reimbursement for Legal Srv. to DET (Alloc. 9081-6624)	\$14,919.00	\$14,944.20	(\$25.20)
08109115	MHD Expenses Incurred by AGO Central Artery/tunnel C. 33,'91 (Alloc 6033-9115)	\$478,923.00	\$478,651.75	\$271.25
08109116	MHD Expenses Incurred by AGO Central Artery/Tunnel c.33,'91 (Alloc 6033-9116)	\$314,712.00	\$307,370.21	\$7,341.79
08109117	MHD Expenses Incurred by AGONon Federal Aid Project C. 33,'91 (Alloc 6033-9117)	\$0.00	\$0.00	\$0.00
08109707	Water Pollution Control Enforcement Activity (Alloc of 2240-9707)	\$0.00	\$0.00	\$0.00
08109710	Air Pollution Control Prgm Enforcment (Alloc. of 2250-9710)	<u>\$25,000.00</u>	<u>\$22,129.83</u>	<u>\$2,870.17</u>
GRAND TOTAL		\$1,967,724.94	\$1,690,652.49	\$275,943.48

DEPARTMENT OF THE ATTORNEY GENERAL

SUSPENSE FUNDS
RECEIPTS AND DISBURSEMENTS

ACCOUNT	ACCOUNT NAME	APPROPRIATION	EXPENDITURES	BALANCE
08106862	Century Auto Apprais Inc. R.P. Stone Jr. and Peter Slate	\$6,800.00	\$0.00	\$6,800.00
8106885	Eric Bartlett D/B/A Bartlett Assoc. and Bartlett Financial Co.	\$200.00	\$0.00	\$2,000.00
08106887	Bruce LedBury D/B/A Cars International LTD	\$11,286.60	\$0.00	\$11,286.60
08106896	Vurhoe Insurance Restitution Account	\$0.00	\$0.00	\$0.00
08106905	Andrews Painting Co. Inc. and F.G. Andrews, Indv. and President	\$0.00	\$0.00	\$0.00
08106915	Barry Cushner D/B/A North Shore Roomates Services	\$1,088.39	\$0.00	\$1,088.39
08106917	Diamond Chevrolet	\$7,396.00	\$0.00	\$7,396.00
08106919	Rusty Jones Inc.	\$2,263.00	\$0.00	\$2,263.00
08106921	Business Educational Services Inc. Marjorie and Fred Camp	\$88,982.46	\$3,115.19	\$85,867.27
08106925	A.J. Long's Inc. d/B/A Economy Auto Sales	\$7,136.00	\$0.00	\$7,136.00
08106930	Woman's World Health Spas of America Inc.	\$20,000.00	\$0.00	\$20,000.00
08106934	Village Truck Sales Inc. and Joseph Szczepaniak	\$68.82	\$0.00	\$68.82
08106941	Mario Chiereghio D/B/A Lee Auto sales	\$3,302.00	\$0.00	\$3,302.00
08106943	William wolf	\$517.55	\$0.00	\$517.55
08106944	Alan S. Miller/Furniture Outlet	\$466.24	\$0.00	\$466.24
08106946	Tijuana Goldstein star, ET AL	\$2,032.21	\$0.00	\$2,032.21
08106947	Ray's Auto Body	\$23,500.00	\$0.00	\$23,500.00
08106950	Abrams ET AL Vs. Hertz Corp.	\$4,584.02	\$0.00	\$4,584.02
08106952	Missions of Mercy , Inc.	\$1,865.00	\$0.00	\$1,865.00
08106953	Outdoor World, Inc.	\$16,474.31	\$0.00	\$16,474.31
08106954	European Health Spa	\$1,322.78	\$0.00	\$1,322.78
08106957	Michael Collins	\$1,375.98	\$0.00	\$1,375.98
08106958	Joy of Movement	\$1,540.60	\$1,540.60	\$0.00
08106959	Stephen J. Favorito	\$52.38	\$0.00	\$52.38
08106960	Craftmatic/contour ET AL	\$14,911.60	\$14,911.60	\$0.00
08106963	Atlantic West	\$1,728.75	\$0.00	\$1,728.75
08106965	Home Repair, Inc. ET AL	\$20,295.55	\$0.00	\$20,295.55
08106966	Raymond A. Noyes	\$0.92	\$0.00	\$0.92
08106967	Getty Petroleum	\$2,500.00	\$0.00	\$2,500.00
08106968	Teknor Apex Co. Inc.	\$75,000.00	\$0.00	\$75,000.00
08106971	Advanced Financial services, ET AL	\$349.00	\$0.00	\$349.00
08106973	Robert Haynes Jr. and Sr.	\$7,023.21	\$7,023.21	\$0.00
08106976	Nelly Gutierrez	\$89,309.12	\$0.00	\$89,309.12
08106978	VIA Brazil, Inc.	\$3,270.00	\$0.00	\$3,270.00
08106980	Roy Parkers D/B/A Shoppers Samplers	\$15,000.00	\$0.00	\$15,000.00
08106981	Escape to Fitness Center	\$2,200.00	\$0.00	\$2,200.00
08106983	Lee Imported Cars, Inc.	\$75,000.00	\$68,750.00	\$6,250.00
08106986	California Fitness Inc. Kneidl	\$10,044.44	\$10,043.44	\$1.00
08106987	Sunshine Daily Rentals, ET AL	\$5,200.00	\$0.00	\$5,200.00
08106989	J.K. Liquidators, ET AL	\$3,150.00	\$0.00	\$3,150.00
08106990	Eric Brill D/B/A Hollywood Model and Talent Showcase	\$110,188.00	\$109,923.61	\$264.39
08106991	Lifetime Nutrition Inc., ET AL	\$4,425.00	\$4,425.00	\$0.00
08106992	Diversified Resorts Inc. D/B/A Oak N' Spruce	\$125,437.91	\$8,235.00	\$117,202.91
08106993	Autothrift Inc. and John Franceschini D/B/A Autothrift	\$25,584.00	\$0.00	\$25,584.00
08106994	NNLC D/B/A Lectra City	\$7,000.00	\$7,000.00	\$0.00
08106995	Lenox Oil Company Inc.	\$19,035.84	\$14,828.98	\$4,206.86
08106996	George Muir D/B/A Journeys on Dialysis	\$5,000.00	\$0.00	\$5,000.00

08106997	Jorge Manuel Dias	\$3,331.40	\$0.00	\$3,331.40
08106998	Richard Kivel Et AL Defendants	\$500.00	\$499.48	\$0.52
08106999	Customized Structures Inc. James Dunlevy and Town and country Modular Homes	\$1,800.00	\$0.00	\$1,800.00
08107000	Paul E. Morrison	\$32,500.00	\$32,500.00	\$0.00
08107001	Mechem Financial of Mass Inc. CA 91-3640	\$100.00	\$100.00	\$0.00
08107002	Employment Network Inc. \$3,775.29	\$3,775.29	\$0.00	
08107003	Distribution Assoc. D.A. Technology	\$5,500.00	\$5,500.00	\$0.00
08107004	Robert Presti and Studio One Kitchens	<u>\$10,710.74</u>	<u>\$10,710.74</u>	<u>\$0.00</u>
GRAND TOTAL		\$882,125.11	\$302,882.14	\$581,042.97

BUSINESS AND LABOR PROTECTION BUREAU

Fiscal Year 1996 was the first complete year of operation by the Business and Labor Protection Bureau since its creation in April, 1995. The Bureau consists of the Division of Employment and Training, the Fair Labor & Business Practices Division, the Insurance Fraud Division and the Medicaid Fraud Control Unit. During this formative period the anticipated benefits of combining these four divisions as part of a separate, yet coordinated, Bureau began to be realized.

Sharing common goals of eliminating fraudulent activities in the marketplace and establishing a level playing field in the economic sector for businesses and individuals alike resulted in better efficiency and productivity by each division. By tapping into the legal and investigative resources available from all of its divisions, each of which are experienced in the areas of fraud prosecution, the Bureau was able to maximize its overall impact and effectiveness in combating the “fraud tax” which unfairly increases the costs and expenses of honest businesses, insurance policy holders and tax payers in Massachusetts.

The Bureau initiated its own in-house educational and training programs to supplement office-wide efforts with sessions and materials specifically geared to the types of cases assigned to its four divisions. A General Counsel was appointed to assist the Bureau Chief in adopting and implementing consistent legal policies and procedures throughout the Bureau.

The number of inter-divisional investigations and prosecutions increased substantially, highlighted, among others, by the Bardzik (unemployment tax and workers compensation premium fraud); (S & S Concrete Floors and Companies, Inc.) (prevailing wage, unemployment tax and workers compensation premium fraud); and the Eastern Contractors (prevailing wage, unemployment tax and workers compensation premium fraud) cases featured in the following pages.

The Bureau maintains its primary offices at 200 Portland Street, Boston and 165 Liberty Street in Springfield.

DIVISION OF EMPLOYMENT AND TRAINING

The Division of Employment and Training is comprised of ten staff members: a chief, managing attorney, four assistant attorneys general, two investigators, an office manager, and an administrative assistant. Pursuant to its authority under Massachusetts General Laws chapter 151A, Section 42A, the Division enforces the provisions of the Massachusetts Employment Security Law. Actions involving employer tax fraud and larceny of unemployment benefits are prosecuted in the District and Superior Courts.

While the Division primarily receives its referrals from the Department of Employment and Training ("DET"), it also generates its own independent actions. Through the utilization of resources in other divisions in the Business and Labor Protection Bureau, the Division targets complex and sophisticated schemes involving various combinations of employment security fraud, prevailing wage, and workers compensation violations. This interdisciplinary effort has been instrumental in the Division's investigation, and successful prosecution, of egregious violators.

SIGNIFICANT ACTIVITIES

EMPLOYMENT SECURITY FRAUD

- Commonwealth v. Michael Bardzik - Middlesex Superior Court - Michael Bardzik, of Hollis, NH, president of Golden Labor Service, Inc., was convicted of 12 counts of failure to pay employer tax contributions, four counts of workers compensation fraud, and one count of a continuing scheme of larceny of property over \$250.

Bardzik was sentenced to 30 days committed in the Middlesex County House of Correction in Billerica on six of the employer tax contributions charges, to run concurrent with each other, plus \$53,000 to be paid in restitution to DET; three-to-five years in MCI-Cedar Junction, suspended for six years, plus \$91,000 to be paid in restitution to the Liberty Mutual Insurance Company on two of the workers compensation fraud charges; and 30 days in the Middlesex County House of Correction, to be served concurrently with the employer tax contribution sentences, on the larceny charge. Sentencing on the remaining tax and workers compensation fraud charges was deferred during the pendency of the probationary period.

Golden Labor Service, which operated out of Lowell, primarily provided unskilled, temporary assembly and clerical workers to client companies in eastern Massachusetts. Bardzik knowingly misclassified these employees as independent contractors instead of as Golden Labor employees. As a result, Bardzik did not pay \$211,201 in employer tax contributions for the 12 quarters from April 1991, through June 1994. Bardzik also gave false information on the actual number of workers he employed to Liberty Mutual Insurance Company to avoid paying \$473,947 in workers compensation premiums.

- Commonwealth v. S & C Concrete Floors & Company, Inc., Stephen Hill, and Christopher Hill - Middlesex Superior Court - Stephen Hill and Christopher Hill, both of Londonderry, NH, and their company, S & C Concrete Floors & Company, Inc., pled guilty to one count each of failure to pay the prevailing wage, and one count each of failing to provide true and accurate records and failure to keep true and accurate records. The Hill brothers, as the president and vice president of S & C, also pled guilty to four counts each of failure to provide workers compensation insurance, two counts each of unemployment fraud, and two counts each of larceny over \$250.

The Hills were sentenced to one year in the House of Correction, suspended for five years, and ordered to pay \$25,049 in restitution and another \$28,000 in fines. The company is obligated to pay an additional \$14,000 in fines. All three defendants were barred from bidding on public works projects for six months.

In separate, but related, actions, the Division also prosecuted five individuals who illegally received unemployment benefits while working for S & C Concrete. The defendants were charged with unemployment fraud in several district courts. Guilty findings were entered against all five defendants, along with orders of full restitution to DET.

- Commonwealth v. Ronald Pasqualino - Dedham District Court - Ronald Pasqualino, of Westwood, was charged with three counts of felony larceny for fraudulently collecting unemployment benefits under three identities. During the prosecution, Pasqualino alleged that he was incompetent to stand trial as he suffered from multiple personality disorder. After a two day competency hearing, the Court ruled that Pasqualino was competent to stand trial. Pasqualino subsequently pled guilty and was sentenced to 18 months in the House of Correction on count one, to be served concurrent with an unrelated sentence he currently was serving; two years in the House of Correction, suspended for two years, on count two, to be served from and after count one; and, on count three, two years in the House of Correction, suspended for two years, to be served from and after count two, with restitution of \$19,641 to be paid to DET.

- Commonwealth v. Henry Son - Norfolk Superior Court - Henry Son, of Marshfield, pled guilty to three counts of larceny of unemployment funds and one count of perjury for defrauding DET of over \$12,000 in unemployment benefits. The Commonwealth alleged that Son utilized three social security numbers and dates of birth to disguise his identity and collect the money from two DET offices between September 1989, and July 1991. Son was sentenced to concurrent sentences of two and one-half years in the House of Correction, suspended for five years, on the three counts of larceny. Restitution was ordered in the amount of \$12,167 to be paid to DET. On the perjury count, Son received a sentence of five years probation.
- Commonwealth v. Benilde Andrade - Boston Municipal Court - Benilde Andrade, president and treasurer of Amily Manufacturing, Inc., a Brockton garment company, was sentenced to three months in the House of Correction for failure to pay \$8,697 in restitution to be paid to DET, as ordered in 1990, for delinquent employment tax contributions.
- Commonwealth v. Paul Weissbach - Waltham District Court - Paul F. Weissbach, of Arlington, admitted to sufficient facts to warrant a finding of guilty that he defrauded DET out of \$19,376 in unemployment benefits over a one year period. The Commonwealth alleged that Weissbach made a series of misrepresentations to DET to qualify for, and remain eligible to receive, benefits. Weissbach, the president and owner of Mapco Automotive Services, Inc., in Worcester, falsely asserted that the company was closed down for lack of business during the time he collected unemployment. While Weissbach collected benefits, his name appeared as an estimator on 382 work orders and he was paying one full-time employee. The case was continued without a finding for six months with immediate repayment of the \$19,376 to be paid to DET.
- Commonwealth v. James Cafferky, Jr. - Cambridge District Court. James Cafferky, Jr., of Medford, admitted to sufficient facts to warrant a finding of guilty that he defrauded DET out of \$4,896.00 in unemployment benefits over a four month period. Cafferky made a series of false and misleading statements to obtain unemployment benefits while he was employed by Roth Enterprises. The case was continued without a finding for two years with full restitution of \$4,896 to be paid to DET. If Cafferky violates the terms of the court order, he is subject to serve 59 days in the House of Correction.

DIVISION STATISTICAL SUMMARY

COURT APPEARANCES

Cases *

Disposed

Appearances

July, 1995	40	11
August	40	10
September	39	9
October	33	10
November	27	9
December	13	1
January, 1996	29	4
February	38	11
March	28	7
April	65	34
May	95	53
June, 1996	<u>63</u>	<u>12</u>
Totals	<u>510</u>	<u>168</u>

MONIES COLLECTED

July 1995	\$ 46,709.61
August	25,682.37
September	39,251.08
October	45,947.83
November	150,873.21
December	69,428.75
January, 1996	64,875.88
February	47,834.18
March	55,264.38
April	106,443.28
May	110,245.20
June, 1996	<u>192,286.29</u>
Total	<u>\$954,842.06</u>

* Includes court cases that are closed by conviction or alternative disposition. The Division may retain supervision over a prosecutionary period, if any.

CASES PENDING AS OF JUNE 30, 1996

Criminal Employee Claims	765
Criminal Employer	510
Other*	<u>36</u>
Total Pending Cases	<u>1311</u>

CASES ON DEFAULT AS OF JUNE 30, 1996: Defendants Remain at Large:

Criminal Employees Claims	244
Criminal Employer	<u>419</u>
Total Defaults	<u>663</u>

CASES CLOSED**

Criminal Employee Claims	109
Criminal Employer	78
Other*	<u>7</u>
Totals	<u>194</u>

COMPLAINTS ISSUED

Criminal Employee Claims	20 (439 counts)
Criminal Employer	<u>53</u> (452 counts)
Totals	<u>73</u> (891 counts)

INDICTMENTS ISSUED

Total	<u>21</u>
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*Includes employer tax and/or employee fraudulent claims cases independently developed by the Attorney General's Office and/or specially referred from sources as other than the Department of Employment and Training.

**Includes removal of certain default warrants and case files closed by the Division and returned to DET after disposition of the matter and completion of the probationary period.

FAIR LABOR & BUSINESS PRACTICES DIVISION

The Fair Labor & Business Practices Division is comprised of a staff of approximately forty-five (45) individuals including Assistant Attorneys General, Inspectors, Financial Investigators, Intake Clerks and Support Staff. The Division is legislatively mandated to investigate and prosecute, when appropriate, labor disputes involving the payment of wages, overtime, vacation pay and prevailing wages on public projects. A Director of Safety supervises enforcement of the Commonwealth's work place safety and child labor laws. A separate Bid Dispute Unit manages public contract bid dispute proceedings. The Division has full time offices in Boston and Springfield and, this year, opened part-time field offices in Pittsfield and Worcester.

SIGNIFICANT ACTIVITIES

SIGNIFICANT CASES

- Ouellet Drywall/Marcel Ouellet - A drywall company and its president pled guilty to four counts of prevailing wage violations and failing to provide true and accurate payroll records. The company was debarred for 6 months, and the defendants were ordered to pay \$7550 in fines and \$200 in victim witness fees.
- August Moon/Kim Woo Gee/Paul Woo Gee - Two restaurant owners and their company pled guilty to ten counts of failing to pay the minimum wage, failing to provide true and accurate records, falsifying records, and retaliatory discharge. Restitution paid to the employees totaled \$5092.89.
- William Gustus - A travel agency operator admitted to sufficient facts that he violated the non-payment of wage laws and agreed to pay \$14,619.42 in restitution, plus victim witness fees, to seven workers.
- Joseph Pereira d/b/a Economy Disposal Systems - A Fall River contractor performing non-public works projects pled guilty to charges of non-

payment of wages and was ordered to pay full restitution of \$1,300. He is serving time for unrelated charges.

- Attorney General v. Town of Blackstone and Blackstone Valley Disposal, Inc. - After receiving notice of the Division's intention to file a civil complaint seeking to void a waste disposal contract on the grounds that it did not provide for the payment of the appropriate prevailing wage, the Town of Blackstone entered into a new contract with a different contractor that complies with G.L. c. 149, § 27F, the applicable prevailing wage structure.
- Pittsburgh Tank and Tower - Charged with a failure to pay the prevailing wage rate, a Kentucky company and its owner agreed to pay restitution of \$7,500 to two employees and not to perform public construction work in Massachusetts for two years.
- DiGregorio Construction - A company which was found guilty of failing to pay the prevailing wage rate, failure to provide true and accurate records and non-payment of wages was ordered to pay \$ 26,000 in restitution and received a six month debarment.
- Smith Architectural/ Stuart Smith - The individual defendant admitted to sufficient facts for a finding of guilty for prevailing wage rate violations of G.L. c. 149 §§27 and 27B. The case was continued for one year and he was ordered to pay \$5,000 in restitution. The company pled guilty and received a six month debarment.
- Popico d/b/a/ Holden Farms Nursery - The company admitted to sufficient facts for a finding of guilty of failing to pay prevailing wages and agreed to pay \$14,000 in restitution.
- Eastern Contractors, Inc. - A subsidiary corporation plead guilty to failing to pay overtime, failing to pay prevailing wage rates and failing to provide true and accurate records. In addition, the parent company pled guilty to avoiding workers compensation insurance premiums. Restitution and fines totaling \$407,000 were paid. The parent company voluntarily was debarred from public works projects for three months and the subsidiary company was debarred for six months.

- Integrated Services Associates (ISA) / William Polis - Mr. Polis admitted to sufficient facts for failing to pay wages to approximately 86 employees. Restitution was ordered in the amount of \$52,594.05.
- Stanley Roofing / Paul Stanley - Mr. Stanley admitted to sufficient facts for failing to pay the prevailing wage rate and was ordered to pay \$50,000 in restitution.
- Feddy General Contractor / Feddy Nwanko - A company was convicted of seven counts of failing to pay prevailing wage rates and one count of failing to provide true and accurate payroll records. It was debarred from doing public works projects for six months.
- Sunset Drywall/Peter Grenier - the defendant admitted to sufficient facts for failing to pay wages. Restitution in the amount of \$8,000 was paid to two employees and the case was dismissed.

DEBARMENT

There have been twenty-two (22) debarments obtained by the Division in Fiscal Year 1996 for convictions under G.L. Ch. 149 §§18 and 27, for failing to pay the prevailing wage rates, and, under G.L. Ch. 149 §27B, for failing to provide true and accurate records.

- Eastern Seaboard Concrete Construction, - debarred for a period of 2 months beginning July 7, 1995 through September 7, 1995.
- Albanese D & S, - debarred for a period of six months beginning July 26, 1995 through January 6, 1996.
- Massasoit Electric Co., Inc., and John Meserve as President, - debarred for a period of six months beginning August 5, 1995 through February 5, 1996.
- G. Lopes Construction, Inc., and Gilbert Lopes as President, 565 Winthrop Street, Taunton, MA 02780 - debarred for a period of six months beginning September 15, 1995 through March 15, 1996.

- New England Reliance Electric, Inc., and Stephen Dilendick as President, and David Vivian as Manager, - debarred for a period of six months beginning October 27, 1995 through April 24, 1996.
- New Hampshire Concrete Cutting and Coring, Inc. and Frederick Nixon, as President, - debarred for a period of two years beginning November 30, 1995 through November 30, 1997.
- Crocker Architectural Sheet Metal Co., Inc., and Christine Crocker-Hebert, as President, - debarred for a period of six months beginning November 16, 1995 through May 16, 1996.
- S.V. Raleigh Development Corp., and Steven Raleigh as President, - debarred for a period of six months beginning November 16, 1995 through May 16, 1996.
- J.C. Bostonian and Richard Cox as Owner, - debarred for a period of three months beginning December 21, 1995 through March 31, 1996.
- D & K Building Movers and David Popoloski as President, - debarred for a period of six months beginning February 1, 1996 through August 1, 1996.
- Eastern Contractors, Inc., and Ramesh Motwane as President, - voluntarily agreed to refrain from bidding for three months beginning June 5, 1996 through September 4, 1996.
- East Coast Construction, Inc., - debarred for a period of six months beginning May 24, 1996 through November 23, 1996.
- DER, Inc. and David E. Rodriguez as President, - Company debarred for a period of one year beginning February 23, 1996 through February 23, 1997. President debarred for a period of six months beginning February 23, 1996 through August 23, 1996.

- Elevator Maintenance and Services and Ronald Vigeant and Paul M. Hale, as President, - debarred for a period of sixty days beginning February 6, 1996 through April 6, 1996.
- Feddy General Contractor, Inc., and Ferdinand (Feddy) Nwankwo, as President, - debarred for a period of six months beginning March 20, 1996 through September 20, 1996.
- S & C Concrete and Stephen & Christopher Hill as President, - debarred for a period of six months beginning March 8, 1996 through September 8, 1996.
- Lawrence M. Hamel, d/b/a L.M. Builders, - debarred for a period of two years beginning March 28, 1996 through March 28, 1998.
- Ouellet Drywall, Inc., and Marcel Ouellet as President, - debarred for a period of six months beginning March 6, 1996 through September 6, 1996.
- Martin Metro East Insulation, Inc., and Kyle Martin as President, - debarred for a period of six months beginning May 8, 1996 through November 8, 1996.
- American Ventilation, Inc., and William Levasseur as President, and Dionne Levasseur as Clerk, - debarred for a period of six months beginning May 9, 1996 through November 9, 1996.
- Adgreene Company, Inc., - debarred for a period of six months beginning June 7, 1996 through December 6, 1996.
- McLean Painting and Ronald McLean as President, - Company and President have been debarred for a period of six months beginning June 19, 1996 through December 19, 1996.

PRE-COMPLAINT RESTITUTION SETTLEMENTS

The Division has been successful in negotiating settlements in certain cases prior to initiating prosecutions. Some notable examples are as follows:

- Bostwick Engineering - The legal issue presented in this prevailing wage matter was whether surveyors at public works projects are entitled to prevailing wage payments. Payment of back wages (\$6,000) was obtained for surveyors on the Deer Island project.
- F.W. Russell & Sons - The company agreed to pay full restitution in the amount of \$4,575.68 for prevailing wage claims and to cease its deductions for vacation plans.
- A & M Roofing & Sheet Metal - The company agreed to pay restitution for overtime underpayment in the amount of \$170,000 owed to 87 employees and \$4,000 for the four employees misclassified as laborers instead of roofers for calculating prevailing wage payments.
- Stannah Stairlifts, Inc. - The company paid full restitution for overtime owed, along with a contribution to the SCORE program of \$1,500, for a total of \$4,707.
- Marco Solo, Inc. and Mark Berkowitz - After non-payment of wages complaints were filed by seventeen employees when a restaurant closed, the owner agreed to pay full restitution of \$13,206 to all employees.
- Lei Jing Restaurant - Upon a non-payment of wages claim brought by the Chinese Progressive Workers Union on behalf of thirteen employees, agreement was reached with the employer to pay full restitution in the amount of \$23,642.85.
- J.C. Clocks, Inc. - A non-payment of wages claim was filed by employees who were not being compensated for travel time. The employer agreed to pay back wages (\$340) and to rectify its payroll practices prospectively.

- W.R. Beebe Associates - Non-payment of wages claims were filed by employees who were working from 6:00 a.m. to 5:00 p.m. but were only paid for the hours between 7:00 a.m. and 3:30 p.m.. The employer agreed to pay full restitution for two years in the amount of \$34,989.
- Davison Company - Upon a prevailing wage claim that a subcontractor misclassified its employees, the employer paid full restitution of \$11,000 owed to two employees.
- ACT Abatement Corporation - The employer agreed to reimburse a union in the amount of \$11,439 for withholding union dues in violation of the prevailing wage laws.
- Northeast Material Handling/Ormes Corporation - A subcontractor engaged in the “moving” business was determined to be subject to the payment of the prevailing wage rate to its workers. The general contractor agreed to pay full restitution to the underpaid workers in the amount of \$10,000.
- Sparkle Cleaning - A company agreed to pay full restitution in the amount of \$34,500 in five monthly installments for the non-payment of overtime to its cleaning employees.
- Hudson Liquid Asphalt - A company agreed not to perform work in Massachusetts for a period of six months and agreed to pay restitution to 16 employees in the amount of \$8,900 and a penalty of \$4,000 payable to the Safe Neighborhood Initiative for violations of the prevailing wage laws.
- Ferris Landscaping - A company agreed to pay back wages for overtime pay in the amount of \$6,600.

PUBLIC INTAKE UNIT

Over the past year the Division's Public Intake Unit has maintained the case files regarding non-payment and prevailing wage cases. During that period the Division has received and processed 4,589 new complaints and disposed of 5,527 cases. It also has prepared over ten thousand non-payment and prevailing wage cases for archiving.

The Public Intake Unit processed 1,582 checks, totaling \$1,144,782.27, by the Boston Office and 155 checks, totaling \$62,633.80, by the Springfield Office representing recovered funds for complainants.

Total amount recovered for complainants by the Division
for FY96:

\$2,808,520.68

Total amount recovered for complainants by the Division
since creation of Division in October 1993:

\$5,500,103.61

FINANCIAL INVESTIGATIONS & AUDITS

The Division's Financial Investigators conduct audits and investigations of claims which include non-payment of wages, non-payment of overtime pay and prevailing wage violations. During Fiscal Year 1996, a total of 114 financial audits/investigations were conducted, either on site or in the Division's offices. Of the 114 cases investigated, 70 cases have been closed. The remaining investigations currently are being completed or the matters have been assigned to an Assistant Attorney General for further review or action. The conducted audits included 61 investigations relating to prevailing wage violations, 40 investigations pertaining to overtime violations and 13 investigations of either non-payment of wages or minimum wage violations.

The conducted audits have identified a total of \$904,662 in various types of wages owed to employees. Through such efforts alone, the Division has collected and forwarded for disbursement during this fiscal year a total of \$81,521 owed to employees. In the course of these investigations the Division has identified additional potential violations in the areas of workers compensation premium avoidance and fraud and employer unemployment insurance tax fraud which were referred to the Insurance Fraud Division and the Division of Employment and Training within the Bureau for further review and, if appropriate, legal action.

BID UNIT

The Attorney General, through the Bid Unit, is charged with the enforcement of the public bidding laws, G.L. c. 149, §§44A et seq. The main enforcement efforts undertaken by the Bid Unit include: (i) the receipt and resolution of filed bid protests; and (ii) the education of public contract participants with respect to the applicable bidding laws.

Fiscal Year 1996 saw an increase in the number of bid protests received and resolved by the Division. The cost of the projects protested ranged from \$26,000 to over \$40 million. The Attorney General's Office serves to provide a fair and accessible forum for the resolution of bid protests. In addition, with the participation and assistance of public contracting authorities, the process can quickly and competently determine the merits of a bid protest and, thereby, facilitate the efficient completion of public works projects.

The Division's bid protest work generated the following statistics in Fiscal Year 1996:

Bid Protests Filed:	181
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Bid Protests Resolved:	181
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The education of public contracting participants (i.e., contractors, public contracting authorities, municipal counsel) is the other major thrust of the Division's enforcement efforts with regards to the public bidding laws. The Bid Unit's educational initiative has included: (i) the receipt of, and response to, telephone calls and all correspondence requesting information concerning the bidding laws; (ii) the presentation of industry seminars throughout the Commonwealth; and (iii) the compilation and dissemination of the Division's bid protest decisions.

During Fiscal Year 1996 over 3,215 telephone calls concerning public contracting were received and answered by the Division. By providing such telephone support, the Division has become an important informational resource to contractors and public agencies alike. The information provided may also prevent subsequent noncompliance with the bidding laws or potential bidding protests.

By the same token, the seminars sponsored by the Division provide the substantive and procedural information necessary to solicit bids or submit bids in the public contracting arena. The seminars have been given, on various occasions, to architectural groups, contracting groups and municipal counsel.

The bid protest decisions of the Division also serve an educational function, because the decisions analyze the bidding laws with respect to the specific fact patterns presented by the protested project. To assist those interested in researching the Office's existing bid protest decisions, a subject matter index was developed during Fiscal Year 1996. The index has been disseminated to many interested parties since its development and has become an important industry reference tool to determine Office precedent and policy.

WAIVERS

The Fair Labor and Business Practices Division is charged with reviewing requests to waive certain requirements of the labor laws under circumstances which might warrant such relief. The Division, under the supervision of its Director of Safety, conducts an investigation before a waiver is granted.

The Division granted waivers during Fiscal Year 1996 as follows:

<u>Type of Waiver</u>	<u>Amount</u>	<u>Waiver Fees Collected</u>
7-Day Continuous Operations	112	11,200
Meal Break Exemptions	115	11,500
Seasonal Overtime Exemptions	30	3,000
Theatrical Performances - Minors	21	2,100
Minors - Working Late Hours	70	17,500
Sheltered Workshops	10	500
Public Works Projects/Extended Hours	6	600
Scaffolding Permits	3	600
3-Hours Daily Minimum Rule	7	350
Window Washing Permits	1	500
Special Student Worker License	<u>110</u>	<u>5,500</u>
TOTALS:	485	\$53,350

INITIATIVE/OUTREACH PROGRAMS

CHILD LABOR

The Division has collaborated with the Department of Public Health's (DPH) Child Labor

Program to produce outreach and educational materials for working teens and the public. The Division also conducted 273 child labor site inspections which resulted in 235 citations.

CHILD LABOR VIDEO

A child labor video was processed in order to be shown as part of a comprehensive program for teenagers to address the issues of health and safety at work. The video made its premiere at MIT on February 13, 1996. Eight high school students were hired as consultants to help get the message across as effectively as possible to the target population. The video is 12 minutes long and has been distributed both in Massachusetts and out of state.

CHILD LABOR POSTER

The same students who consulted on the child labor video worked with the Division and DPH to produce a poster to inform workers under the age of 18 of the protections afforded to them by the Commonwealth's child labor laws. The poster is aimed at attracting the attention of young workers who often are exploited because they haven't been informed of their rights. A total of 5000 posters will be distributed to schools, teen centers, adolescent health centers, and similar establishments.

CHILD LABOR BROCHURE

Pamphlets have been produced to educate minors, their parents, school departments, employers and health care providers about child labor issues.

BROCKTON TEEN PROJECT

The Division is represented on the advisory board of a two-year community based project in Brockton entitled: "Protecting Young Workers." The goal of the project is to educate high school students, teachers, employers, labor representatives, parents and other community members about occupational safety and health for working teens.

OAG CHILDREN'S WORKING GROUP

In June 1996, three representatives from the Division participated in the first meeting of the Children's Working Group, a new Attorney General's Office task force created to examine children's issues.

WORKPLACE SAFETY

The responsibilities of the Division's safety program includes oversight and enforcement of workplace safety and health. The program has developed and strengthened ties to other programs within the Attorney General's Office and to other government agencies, in an effort to provide the maximum protection to workers while making the best use of the resources allocated to each of those programs. Groundwork has been laid for a system of safety and child labor referrals among the Massachusetts Department of Labor and Industries, the Massachusetts Department of Public Health, and the United States Department of Labor (OSHA and Child Labor). In addition, an interoffice task force continues to meet regularly to identify workplaces where violations of safety standards may be exposing workers to hazards. The Division also conducted investigations of 27 workplace fatalities and 36 serious injuries.

- Deer Island - Division representatives have spent considerable time at Deer Island, working with the Boston Department of Health and Hospitals, Department of Labor and Industries, the federal Centers for Disease Control, the Massachusetts Water Resources Authority and unions representing the workers who are constructing two tunnels. One of the tunnels is seven and a half miles long and connects Long Island, Nutt Island and Deer Island. The other will be nine and a half miles long (420 feet under water) and will act as the outfall tunnel for waste processed at the Deer Island treatment plant. Three underground inspections were conducted and water samples were collected for analysis. An investigation and control program has been implemented and there now is routine surveillance of the project to identify any workplace hazards for the employees.
- Older Workers' Project - Department of Industrial Accidents records of workplace injuries were reviewed for injuries among workers over the age of 70. A pilot study was conducted to examine the causes of the injuries within this age group. The results of the study may be used to target certain types of work places that employ older workers.

REGIONAL OFFICES

In our continued efforts to provide service to all of the workers and employers throughout the Commonwealth, the Division has sought to open satellite offices in addition to our permanent Boston and Springfield locations. The part-time regional offices opened in Fiscal Year 1996 are located in Pittsfield and Worcester.

- SPRINGFIELD OFFICE - The Division's full-time Springfield Office, located at 165 Liberty Street, Springfield, continues to serve the public in Western Massachusetts.

Total Number of Complaints Received:	923
Cases Closed	878
Total Monies Collected	\$445,784.29

Preconstruction Conferences	13
Child Labor Site Visits	140
Overtime Site Visits	109
Prevailing Wage Site Visits	77
Construction Safety Citations	35
Industrial Safety Citations	17
Accident Investigations	12
Fatalities Investigated	4

- PITTSFIELD OFFICE - On January 26, 1996, the Division's part-time satellite office in Pittsfield had its grand opening. The office is located at 46 Summer Street, Pittsfield, and is open every Tuesday from 8:45 a.m. until 1:00 p.m.. The office averages eighteen complaints or referrals weekly. The opening of this satellite office has assisted in the enforcement of labor laws in Berkshire County. It also provides a convenient location where the Division can interface with labor and management in Berkshire County. Prior to the establishment of the Pittsfield office, Berkshire County matters were dealt with over the phone, through the mail, or in the Springfield Office, some 55 miles away. The following restitution has been collected by the Pittsfield Office during Fiscal Year 1996:

Prevailing Rate Wages	\$56,761.09
Non-Payment of Wages	\$25,061.44

- **WORCESTER OFFICE** - On March 11, 1996, the Division's part-time satellite office in Worcester was opened. The office is located at 340 Main Street, 2nd Floor, Worcester. Office hours are Monday and Tuesday, 8:45 a.m. to 5:00 p.m.. The following are the statistics for the office's initial performance during the last three months of Fiscal Year, 1996.

Informational telephone calls	750
Walk ins	48
Complaint Forms mailed out	106

CENTRAL REGISTER PROJECT

The Division has continued the Central Register Project it began last fiscal year. Each week the Division sends a letter, along with informational brochures, to all Awarding Authorities seeking bids on a public works projects as published in the Central Register. The letter and brochure serve as a reminder of the applicable statutes enforced by the Division. In addition, the Division reminds all contractors who have been identified as having been awarded a project of their obligation to comply with the prevailing wage and other relevant laws enforced by the Division. The informational brochures entitled: "An Important Guide for Awarding Authorities" and "An Important Guide for Contractors Doing Public Works Project in Massachusetts," have greatly assisted in delivering the message that the Office of the Attorney General intends to enforce compliance with the labor laws of the Commonwealth. During Fiscal Year 1996 approximately 4,826 informational letters were mailed out through the Central Register Project.

LEGISLATION

The Division continued to seek ways to increase in its ability to provide swift, efficient and fair enforcement of the Commonwealth's wage and employment laws. It participated actively in the drafting and filing of legislation to empower the Attorney General's Office to issue civil citations for violations of the Commonwealth's wage laws. Proposed legislation in this area

seeks alternative civil enforcement authority over prevailing wage, non-payment of wages, minimum wage and overtime. The Division views the legislation as a means of providing greater efficiency, flexibility and responsiveness to the vast majority of the complaints filed by the Commonwealth's workforce, thus allowing the Division to use the criminal court system for only the most egregious violations. Although the proposed legislation was approved by the Senate, it was not voted on by the House during the legislative term.

Outside sections of the FY97 budget included several corrective changes to Chapter 149 and 151 reflecting the authority of the Attorney General's Office to enforce the provisions of these chapters as transferred from the Department of Labor and Industries to the Attorney General in 1993.

SPEAKING ENGAGEMENT/OUTREACH

- Division staff outlined the prevailing wage and public bidding laws to a group of individuals consisting primarily of contractors and awarding authorities in southeastern Massachusetts at a UMass Dartmouth conference held on April 17, 1996.
- Division staff also presented material on the prevailing wage law and its enforcement with practical applications for cities and towns at the Massachusetts Municipal Auditors Association Annual Conference, which was held on June 3, 1996.
- The Division's Director of Safety, spoke at several professional meetings during the fiscal year. These included panel presentations on child labor to the Vocational Education Conference sponsored by the MA Department of Public Health in July, 1995 and the American Industrial Hygiene Association (AIHA) Conference and Exposition in Washington, D.C. in May, 1996. In November, 1995, the Safety Director and the Bureau Chief addressed the New England Section of the AIHA, discussing the role of the OAG in the enforcement of safety at work. The Safety Director also spoke at a Public Health Policy seminar at the University of Massachusetts in November, 1995, regarding the role of public health and safety professionals in bringing about positive changes in America's workplaces.

The Safety Director addressed the Association of General Contractors at one of their safety meetings and answered questions about the role of the Fair Labor and Business Practices Division with respect to workplace safety. In September, 1995, the Safety Director appeared on a television program that reported on health issues for hospital employees. In February, 1996, the National Institute for Occupational Safety and Health sponsored hearings in three US cities to solicit input for their ten-year research agenda. The Safety Director wrote and presented testimony about the need for research on the effectiveness of various intervention schemes for occupational hazards. On the annual Workers' Memorial Day in April, the Safety Director and the Bureau Chief spoke to various audiences gathered to commemorate workers who had been killed on the job.

- The Division's Managing Attorney was a speaker at the Boston Bar Association's Ninth Annual Spotlight on Labor and Employment Law on June 18, 1996. One of the seminar's focal points was governmental agency investigations and enforcement of the following employment standards and employee benefit legislation: the Fair Labor Standards Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act, the Executive Order 1246, the Occupational Safety and Health Act, and the Massachusetts Payment of Wages Law.
- The Division's Chief has addressed a variety of groups including union officials, business representatives, and legal groups.

INSURANCE FRAUD DIVISION

The Insurance Fraud Division ("IFD") is comprised of nine Assistant Attorneys General, a paralegal and two support staff. The Division includes a District Court Unit that focuses on expediting investigations and prosecutions of fraud cases that are appropriate for charging in the Commonwealth's district courts.

The IFD investigates all types of insurance fraud allegations involving fraud against insurers and against public entities, such as the Commonwealth, its agencies and political subdivisions. The IFD also works with other Divisions in the Attorney General's Business &

Labor Protection Bureau to investigate and prosecute insurance fraud that adversely effects businesses or fair competition. Cases run a full range, from multi-million dollar premium fraud cases, major conspiracies by professionals or firms, or conspiracies centered around auto repair businesses, to individual's who file phony injury claims after staged motor vehicle accidents, "padded" claims on homeowner's policies and false billing for insured services.

The IFD receives cases from a number of sources. By far, the biggest source of cases is the Massachusetts Insurance Fraud Bureau. In the last fiscal year, the IFD prosecuted the 100th defendant referred by the Insurance Fraud Bureau. The IFD also receives cases from the Public Employee Retirement Administration (PERA), the Governor's Auto Theft Strike Force (GATSF), the Department of Industrial Accidents (DIA), the Worker's Compensation Rating and Inspection Bureau (WCRIB), the National Insurance Crime Bureau (NICB), as well as cities and towns, private attorneys, judges and concerned citizens throughout the state.

SIGNIFICANT ACTIVITIES

The IFD obtained charges in sixty new cases in Fiscal Year 1996 and completed prosecutions in fifty-eight. Cases included charges of workers compensation fraud, motor vehicle insurance fraud, homeowners insurance fraud, life insurance fraud, health insurance fraud, as well as larceny and fraud by insurance agents, claims adjusters and damage appraisers. New cases charged in Fiscal Year 1996 included allegations that defendants obtained in excess of \$725,000 in fraudulent insurance payments. Closed cases resulted in orders requiring restitution payments in excess of \$850,000.

WORKERS COMPENSATION FRAUD

- Commonwealth v. Richard DiChiara, Middlesex Superior Court. DiChiara was charged with workers compensation fraud, filing a false insurance

claim and larceny for his fraudulent receipt of \$90,000 in benefits. DiChiara owned a security company at the time of an accident. He falsely inflated his income in order to collect \$444 per week in benefits over a five year period. An investigation revealed that he worked as a security manager for a storage company and he operated a mail order business from his residence while collecting benefits. Despite that employment, DiChiara submitted statements to the insurer claiming that he was not working and had no income. DiChiara was sentenced to serve 3 months in the house of correction, followed by a suspended state prison sentence and probation for 2 years. He must complete 100 hours of community service and repay over \$90,000 in restitution.

- Commonwealth v. Roger Lydicksen, Norfolk Superior Court. Lydicksen was charged with workers compensation fraud, insurance fraud, larceny and conspiracy for collecting total disability benefits while operating a fencing and landscaping company. Lydicksen used his girlfriend's bank accounts to conceal income and expenses for the business because he was collecting total disability benefits at the time. Customers reported that Lydicksen ran the business and did the work but instructed customers to make checks payable to his girlfriend. The insurance company obtained a civil judgment and recovery from Lydicksen while this case was being prosecuted. Lydicksen was given a sentence of two years in the house of correction, suspended for two years, ordered to pay a fine of \$10,000 and to pay restitution of \$5,000.
- Commonwealth v. James DeVincentis, Norfolk Superior Court. DeVincentis pled guilty to insurance fraud in connection with a false disability claim he filed. The defendant allegedly was injured while working at a Grossman's Lumber Store. He remained on total disability for an extended period of time. While he was collecting benefits, he began working as a singer in a rock and roll band. Although the band earned very little money, it was clear that DeVincentis was not disabled while he was working with the band. The court imposed a suspended sentence and ordered restitution in the amount of \$6,000 to be paid to The Travelers Insurance Co.
- Commonwealth v. Curtis Lanfair, Boston Municipal Court. On December 4, 1995, Lanfair pled guilty in the Boston Municipal Court to charges of larceny over \$250 and two counts of workers compensation insurance fraud. Lanfair worked as a maintenance man for the University of Massachusetts at Amherst. He injured his knee at work in 1985 and began collecting total disability benefits from the Commonwealth. However, investigators received information that Lanfair operated a newspaper

distribution business in 1991 and 1992. Further investigation revealed that Lanfair collected \$10,568 in workers compensation benefits while working for the Greenfield Recorder delivering papers. Lanfair was ordered to serve probation for 3 years, to pay restitution of \$10,568 and to perform 300 hours of community service.

- Commonwealth v. David Wall, Suffolk Superior Court. Wall was found guilty of 2 counts of workers compensation fraud, 2 counts of larceny over \$250, 3 counts of filing a false claim against the Commonwealth and 1 count of attempted larceny. Wall drove buses, trucks and heavy construction equipment for the City of Boston. In 1991 he claimed he injured himself lifting a bundle of paper. In 1992 he filed a similar injury claim. During both years he collected total disability benefits as a result of the injury claims. However, an investigation revealed that Wall worked as a bus driver during both periods of total disability, during which he improperly collected \$15,000 in benefits. Wall was sentenced to serve 6 months in the house of correction, with a suspended sentence to follow. Wall also was ordered to repay the City of Boston \$15,940.68 in restitution.

MOTOR VEHICLE INSURANCE FRAUD

- Commonwealth v. Griselda Tejada Vasques, Lawrence District Court. Defendants were charged with motor vehicle insurance fraud and larceny for committing "garaging fraud," a form of insurance premium fraud. In applications for motor vehicle insurance, it was alleged that Griselda Vasques submitted false representations about her residence and principal place of garaging her vehicle. Ms. Vasques claimed that she lived in Methuen and kept her two cars garaged there, despite the fact that she lived in Lawrence. As a result, misrepresentations concerning her principal place of garaging her insured vehicle appeared on her insurance application in order to obtain improperly low premiums. Vasques pled guilty to the charges pending against her. She was ordered to pay restitution of \$567 and a fine of \$567 (the amount of money she tried to save by the garaging fraud).
- Commonwealth v. Wayne Clark Sr., Bristol Superior Court. The defendant was charged with motor vehicle insurance fraud, larceny, filing a false insurance claim, and concealing a vehicle to defraud an insurer after an expensive BMW he had reported stolen was found in a storage locker rented by Clark using his daughter's name. In addition, an investigation into other insurance claims by Clark revealed that he filed a \$29,000 theft claim after tools and equipment allegedly were stolen from his home. Family members cooperated with the investigation and established that the

burglary never occurred. Finally, Clark and his son stole a BMW belonging to Clark's daughter because the car needed repairs she could not afford, Clark and his son stole the car without the daughter's knowledge so she could file an insurance claim. Wayne Clark Jr. was also charged in the case. Due to his cooperation with investigators, he was given a suspended sentence and ordered to repay \$13,000 for the stolen BMW. Wayne Clark Sr., was sentenced to serve 18 months in jail and to pay restitution in the amount of \$29,000.

- Commonwealth v. Irving Shubert, Suffolk & Norfolk Superior Courts. Shubert and his company, Nationwide Glass, were charged with multiple counts of motor vehicle insurance fraud and larceny in connection with a scheme to submit inflated bills for auto glass replacement. Shubert operated a mobile van that replaced windshields off site. He had the customer sign a receipt for the glass, but defrauded the insurers by billing for more expensive windows than the ones actually installed. As a result, insurers were overbilled at least \$57,000 over a period of several years. Shubert pled guilty to 11 counts of larceny over \$250, 12 counts of Motor Vehicle insurance fraud, and 8 counts of larceny under \$250. He was sentenced to serve 59 days in the house of correction, followed by 3 months of home confinement on an electronic bracelet and five years of probation. He must also pay \$56,905 in restitution and complete 100 hours of community service.
- Commonwealth v. Chomm Ouk, et al, Lowell District Court. Seven defendants were charged with motor vehicle insurance fraud and larceny following the filing of false personal injury claims after a motor vehicle accident in Lowell. The seven defendants had just gotten out of a parked van and were walking away when the van was hit by a passing car. All seven defendants ran back to the van and jumped in. When the police arrived, all seven claimed to be injured and all sought treatment at local hospitals. Chomm Ouk, Menghy Phan and Reang Eao were all ordered to serve jail sentences for their parts in the scheme. The other defendants were found guilty and given suspended sentences and fines.
- Commonwealth v. Abbas Rad, Worcester Superior Court. Rad was the primary leader of a group of defendants who filed four separate false auto insurance claims. He was indicted in Worcester on four counts of motor vehicle insurance fraud and four counts of larceny. Rad owned a used car business and used his vehicles to stage two accidents. In addition, Rad and co-conspirators submitted false rental car bills and repair invoices on two other claims. Rad and the others collected over \$15,000 before they were caught. After a jury trial, Rad was convicted of all charges, on December 4, 1995, and was sentenced to serve one year in jail, with a suspended

sentence and three years probation to follow. Rad was also fined \$28,750 and ordered to pay restitution of over \$10,000.

- Commonwealth v. Michael Cardoza, Quincy District Court. Cardoza reported to Boston Police that his Mercedes was stolen and he later filed an insurance claim for the car. Investigators from Arbella Insurance Company, working with police officers from Mattapoisett, located the Mercedes at the home of a close friend of Cardoza. The defendant was then charged with motor vehicle insurance fraud, attempted larceny and concealing a motor vehicle to defraud an insurer. Cardoza pled guilty and was sentenced to serve 1 year in jail and ordered to pay \$625 in fines.

OTHER INSURANCE FRAUD CASES

- Commonwealth v. Pamela Simpson, Quincy District Court. Pamela Simpson was a claims adjuster for USF&G Insurance Company. She used her insider status to insert false claims in otherwise legitimate personal injury claim files and arranged to have checks issued to accomplices. Her brother, Michael Lodge, recruited accomplices and drove the accomplices to the bank to cash insurance checks, retaining the majority of the money for Simpson and Lodge. Simpson and Lodge were charged with motor vehicle insurance fraud, larceny, forgery and conspiracy. Simpson was given a suspended sentence, with probation for 3 years, and ordered to repay \$13,537 in restitution to USF&G and a \$2,000 fine. Michael Lodge was arrested and convicted of unrelated murder charges after we filed. As a result, and in view of his existing life sentence, the charges against him were guilty-filed.
- Commonwealth v. Dr. Joel Korins, Bristol Superior Court. Dr. Korins was a podiatrist with a practice in southeastern Massachusetts. He pled guilty to five counts of insurance fraud, five counts of larceny, five counts of filing false health care claims and conspiracy on April 17, 1996. Dr. Korins submitted fraudulent treatment records for a large number of his patients. False bills in ten different patient files were documented during an investigation. In many cases, Dr. Korins billed for treatment that was never provided. Dr. Korins also conspired with a friend (who also was indicted) to submit phony bills to a health insurer for treatment to the friend's family members. Dr. Korins was sentenced to a two year suspended sentence and ordered to pay \$16,072.62 in restitution. In addition, as a condition of the Commonwealth's recommendation, Dr. Korins was required to surrender his license to practice medicine and to agree not to practice medicine or apply for reinstatement for ten years.

- Commonwealth v. Laycock & Blaha, Hingham District Court. On November 20, 1995, complaints were issued against James Laycock and Kurt Blaha, charging them with insurance fraud, attempted larceny, filing a false affidavit and conspiracy in connection with a scheme to stage the theft of an expensive sailboat. Laycock and Blaha bought two boats that had been badly damaged in a 1991 hurricane. They hired someone to combine the two boats into one, by using the side of one boat, fused to the side of the other boat. They then "registered" two boats, under separate names. Blaha obtained insurance for the non-existent boat. The defendants then sailed the new boat (without a name painted on the transom) to a marina and registered it with the harbor master. Shortly after that, the defendants reported the fictitious boat stolen. The real boat appeared in Laycock's custody under a different name. Investigators from the marine insurer were suspicious and worked with officers from the Massachusetts Environmental Police to check into the claim. Blaha's insurance claim was denied before any payment was made. Blaha pled guilty and agreed to cooperate with the Commonwealth's investigation. Laycock was given an 18 month suspended sentence, fined \$1,000 and ordered to complete 250 hours of community service. The insurer recovered a substantial sum from Laycock in a separate civil action.

DIVISION STATISTICAL SUMMARY

TYPES OF CASES

Motor Vehicle Insurance Fraud	64
Workers Compensation Fraud	39
Other Insurance Fraud	<u>15</u>
	118

COURTS

Superior Court Cases (Essex, Middlesex, Norfolk, Plymouth, Suffolk, Worcester)	40
District Court Cases (Attleboro, Ayer, Boston Municipal Court, Brockton, Brookline, Cambridge, Chelsea, Dedham, Dorchester, Edgartown, Framingham, Greenfield, Hingham, Lawrence, Leominster, Lowell, Malden, Natick, Plymouth, Quincy, Roxbury, Springfield, Waltham, Wareham, Wrentham, West Roxbury)	<u>78</u> 118

TRAINING & OUTREACH PROGRAMS

AGO/IFB Training Seminar on Workers Compensation Insurance Premium Fraud: Investigations & Prosecutions

- On December 7 and 8, 1995 the IFD presented a seminar on Workers Compensation Insurance Premium Fraud, in a program jointly sponsored by the Attorney General's Office and the Massachusetts Insurance Fraud Bureau. The Program brought together professionals from all areas of workers compensation insurance, law enforcement and prosecution and focused on practical tips for spotting patterns of insurance fraud, such as concealed or misclassified employees and improper use of independent contractor status. Speakers discussed how to document the fraud during audits, surveillance or interviews and how to achieve equally important goals of protecting against premium fraud and effectively prosecuting those who commit it.

Training Programs for the Public Employee Retirement Administration (PERA) Workers Compensation Unit

- The IFD regularly conducts bi-monthly meetings with PERA's workers compensation unit and reviews investigations in progress and pending prosecutions. In addition, the IFD has participated in two Training Programs for PERA claims adjusters and agency attorneys on the detection, investigation, documentation and proof of workers compensation fraud by public sector employees.

MEDICAID FRAUD CONTROL UNIT

The Attorney General's Medicaid Fraud Control Unit (MFCU) is comprised of nine prosecutors; fifteen investigators, including auditors, pharmacists, registered nurses, computer analysts, and support staff. The MFCU investigates and prosecutes healthcare providers for defrauding the Medicaid program, and those caretakers that abuse, neglect, mistreat or financially exploit the elderly and the disabled in long term care facilities. The MFCU, one of 47 such units nationwide, is certified annually and receives 75% of its operating budget from the federal government.

During fiscal year 1996, the MFCU initiated several criminal and civil enforcement actions as it sought to have a significant deterrent impact on the healthcare provider community. As reported below, the MFCU investigators and prosecutors brought criminal and civil actions against a variety of healthcare providers, including physicians, dentists, and psychiatrists; pharmaceutical, transportation and durable medical equipment companies; clinical laboratories and home health aides. In addition to recovering nearly \$3.3 million in criminal and civil fines and restitution, the Attorney General's MFCU brought 68 individual indictments, convicted a total of 26 individuals and completed 12 prosecutions of nursing home caretakers who abused, mistreated or neglected elderly residents in long term care facilities.

SIGNIFICANT ACTIVITIES

PHYSICIANS

- Newton Psychiatrist - A Newton psychiatrist was sentenced to three-to-five years in state prison after he pled guilty to stealing from the state's Medicaid program. The defendant was ordered to pay over \$125,000 in fines and restitution after he fraudulently billed Medicaid for services that were never performed, including charging the program for hour-long office visits when they actually took only 15 minutes and charging Medicaid for claims for therapy sessions on days when he was actually out of the state on

vacation. The defendant currently is serving a 40-month sentence in a federal penitentiary for federal Medicare fraud and mail fraud. The state sentence is to be served concurrent with the federal sentence. The case is a result of a joint enforcement initiative between the Attorney General's Office, the U.S. Attorney's office, the Federal Bureau of Investigation and the Federal Office of Inspector General. As a result of the state and federal fraud investigations, the defendant's license to practice medicine has been suspended indefinitely by the Board of Medicine. (May 1996)

- Longmeadow Physician - A civil settlement was reached with a Longmeadow doctor who allegedly overbilled Medicaid recipients for allergy treatments. The physician paid \$35,000 to the Medicaid program to resolve billing discrepancies identified in a probe by the Medicaid Fraud Control Unit. Contrary to Medicaid regulations, the doctor inappropriately billed Medicaid patients both for office visits and allergy injections on the same day when the primary purpose of the visit was for an injection. (November 1995)

TRANSPORTATION

- Regional Transit Authorities - The Medicaid Fraud Control Unit recovered more than \$170,000 in billings to resolve disputes between four regional transit authorities and Medicaid regarding contracts to provide taxi and wheelchair van transportation services for Medicaid recipients. Medicaid pays for recipients' transportation to and from medical appointments. The companies have agreed to pay financial adjustments to Medicaid and renegotiate the applicable contracts. In addition, each transit authority agreed to provide transportation in identified geographical areas of the Commonwealth and each will provide educational programs for Medicaid recipients, designed to show them how to use less expensive fixed-route transportation to minimize their reliance on more expensive taxi and van service. In a related investigation, a Springfield taxi cab company was convicted of 28 counts of causing false Medicaid transportation claims and larceny. The defendant was ordered to pay \$23,000 for inflating the miles that Medicaid recipients were transported to and from their medical destinations. (January 1996)

DENTISTS

- Two Lynn & Jamaica Plain Dentists - Two dentists have agreed to pay a total of \$500,000 in penalties to settle allegations of Medicaid fraud and abuse in their billing practices. The agreements came as result of joint fraud and abuse investigations into Medicaid providers by the MFCU and

the Division of Medical Assistance (DMA). The Lynn dentist, who investigators allege had a history of inappropriate billing for dental services to Medicaid, agreed to pay \$375,000 in full payment of alleged overcharges and civil penalties to the Medicaid program. The dentist also voluntarily agreed to withdraw as a provider of dental services to Medicaid beneficiaries. The Jamaica Plain dentist paid \$125,000, including restitution and penalties, and had agreed to a court ordered compliance program and future audits by the DMA. According to the MFCU investigators, both dentists allegedly billed more than the maximum allowable charges, billed for services not covered by Medicaid and billed for services to patients who were not yet Medicaid eligible. (January 1996)

HOME HEALTH COMPANIES

- Mental Health Centers - Three South Shore area mental health centers agreed to pay \$147,000 in restitution for allegedly billing Medicaid for questionable music psychotherapy sessions in nursing homes. Legitimate group psychotherapy for Medicaid recipients is a service that is reimbursed by the program. The defendants acted contrary to Medicaid regulations that prohibit mental health centers from billing non-medical or recreational services as psychotherapy. (December 1995)
- Roslindale Footwear Distributor - A former footwear distributor for nursing home residents pled guilty to five counts of Medicaid provider fraud and four counts of larceny from the Medicaid program. The defendant was sentenced to a three-to-five year suspended sentence, and 10 years supervised probation. He was ordered to pay \$150,000 in restitution and he must perform 100 hours of community services for each year he is on probation. The defendant devised schemes in which he defrauded Medicaid by overcharging for orthopedic shoes or supplying the shoes to those who didn't need them. He also billed Medicaid for removable arch supports, overcharging the program far in excess of the maximum allowable amount for orthopedic footwear and charging for custom-made shoe inserts that were pre-made. (March 1996)
- Health Care Company - A California health care company with offices in Massachusetts agreed to repay \$1.36 million to the Commonwealth for alleged Medicaid abuses. The payment is part of a \$44.5 million nationwide settlement with the company to be shared by all 50 states. The company supplies home infusion therapy products, which involves the delivery of medicine and nutrition to patients in a home-setting through the use of tubes and other medical equipment. The health care company has been the subject of civil, administrative and criminal investigations on both

the state and federal level into its business practices in providing services and therapies to Medicaid and Medicare recipients. Under the terms of the agreement, the company will cooperate in the continuing investigation of those employees and physicians allegedly involved with Medicaid referrals and illegal kickbacks. The company also pled guilty to federal mail fraud charges and paid the federal government \$161 million in civil damages and criminal fines for entering into illegal contracts with physicians by paying them to refer Medicaid patients to use their products. Under both state and federal law, it is illegal to compensate physicians for the referral of Medicaid patients. (August 1995)

HOME HEALTH AIDES

- Fall River Home Health Aide - A home health care attendant who stole more than \$30,000 from the Medicaid program was convicted of multiple counts of filing false Medicaid claims and larceny. The defendant was sentenced to a committed year in the Suffolk County House of Correction and five years probation. In addition, she was ordered to pay \$15,000 in restitution or serve 3,000 hours of community service. The state's personal care attendant program allows hundreds of chronically disabled recipients to remain at home with the aid of personal care givers, rather than being admitted to far more expensive institutional facilities. The defendant provided substandard care that led to the recipient's hospitalization while forging signatures on official personal care attendant time sheets. (September 1995)
- Duxbury Home Health Aide - A former nurse whose license had been suspended for diverting drugs for her personal use pled guilty to five counts of unlicensed practice of nursing, five counts of unlicensed practice to a profession, five counts of larceny by false pretense, two counts of forgery, two counts of uttering a forged instrument, and two counts of causing false Medicaid claims. The defendant was sentenced to one year at MCI Framingham, six months to be served under house arrest, the remainder of the sentence to be suspended with three years supervised probation. As a condition of probation, the defendant must undergo an evaluation for drug therapy and counseling and cannot work for a health care facility. The defendant's nursing license was suspended when she admitted to the state Board of Registration in Nursing that she had taken drugs for her own personal use from a Boston area hospital where she was employed. The defendant worked as a registered nurse after she had presented forged nursing licenses at several nursing homes, hospitals and medical offices. (October 1995)

- Brighton Home Health Aide - A Brighton woman whose registered nursing license had been revoked, pled guilty to three counts of unlicensed practice of nursing and two counts of unlicensed practice of a profession. The defendant was sentenced to 18 months of supervised probation. As condition of the probation, she must enroll in the Board of Registration in Nursing Substance Abuse Rehabilitation Program and not seek employment as a registered nurse. The defendant's nursing license was revoked by the Board of Registration in Nursing for mishandling narcotics at a local hospital. According to the Board, she signed out amounts of Morphine and Demerol from the hospital pharmacy where she was employed that could not be accounted for in records. Despite the revocation, the defendant continued to illegally practice as a registered nurse. (April 1996)

PHARMACIES

- Quincy Pharmacy - A Quincy pharmacy and its pharmacist owner pled guilty to filing false Medicaid claims and larceny. Involved in a scheme with a Jamaica Plain doctor, the pharmacist allegedly dispensed drugs prescribed by the doctor that were not medically necessary. The defendant allegedly also required that any patient who had a controlled substance prescription filled at his pharmacy had to present a second prescription for a non-controlled substance before the drugs were to be dispensed. In many cases, the second non-controlled substance prescription was left at the store and then placed back into inventory for resale. Investigators allege the doctor in question agreed to such an arrangement. The pharmacist was sentenced to two years probation and ordered to pay \$71,000 in restitution and fines for defrauding the state's Medicaid program. (December 1995)
- Holyoke & South Boston Pharmacies - Two pharmacies paid \$10,000 each in a civil settlement for alleged wrongful collection of funds from the state's Medicaid program. Each pharmacy allegedly received \$10,000 from the Commonwealth's Medicaid program after inappropriately billing the Commonwealth for original physician prescriptions which were not present in their pharmacy records. The pharmacies also allegedly billed Medicaid for certain items at prices higher than the usual and customary charges to customers. (April 1996)
- Pharmacy Chain - A regional supermarket and pharmacy chain paid \$1 million to settle allegations that the chain overcharged Medicaid programs in Massachusetts, Connecticut and Rhode Island. The pharmacy chain agreed to pay the Massachusetts Medicaid program \$600,000. The three-state settlement calls for \$150,000 in payments to each of the Medicaid programs in Connecticut and Rhode Island as well as \$50,000 to

community service programs in each of those states. The MFCU investigators alleged that the stores were not crediting certain discounts to the Medicaid program as required by law and offered a gift certificate program to consumers in exchange for their filling new prescriptions at the pharmacies. Investigators also alleged that some Medicaid customers received cash after making small purchases with the gift certificates. The Attorney General's pharmacy audit revealed that the chain's pharmacies had billed Medicaid using improper codes, failed to properly retain prescription documentation required by law, and billed for Medicaid prescriptions ordered but never picked up by Medicaid customers. The Massachusetts segment of the investigation began after the MFCU received complaints that Medicaid customers were cashing gift certificate coupons for items that were not medically necessary. (January 1996)

ELDER ABUSE AND FINANCIAL EXPLOITATION

- Former Roxbury Nursing Home Employees - Six former nursing home employees were convicted for their role in a scheme to steal approximately \$79,000 from a male resident. Three of the defendants pled guilty to larceny, receiving stolen property and uttering a forged instrument. One defendant was sentenced to six months in the House of Correction, suspended for two years. The remaining defendants were placed on probation and ordered to pay restitution. The defendants fraudulently obtained access to the victim's mail, including bank statements and blank checks. They forged the resident's signature and presented the same for payment. (August 1995)
- West Harwich Nurses Aide - A former certified nurses aide admitted to sufficient facts for a guilty finding on one count each of patient abuse and assault and battery for striking a disabled patient who was suffering from a head injury. The case was continued without a finding for two years on the condition that the aide not work in a long-term care facility in any capacity for five years. (January 1996)
- Shelburne Falls Nurses Aide - A former certified nurses aide admitted to sufficient facts to one count each of patient abuse and assault and battery of a retarded nursing home resident. The case was continued without a finding for one year and the defendant was placed on probation and ordered to obtain counseling and therapy. According to the MFCU investigators, witnesses reported that the aide slapped the resident with her open hand on the side of his head after the resident punched the aide in her chest. (February 1996)

- New Bedford Nurses Aide - A nurses aide admitted that she hit a mentally retarded resident with her open hand across her face after the resident spit at the aide, pulled her ponytail and hit her several items. The case was continued without a finding for a period of sixty (60) days. The Commonwealth argued that a guilty finding should enter and recommended that the defendant be placed on one (1) year of supervised probation. The aide is permanently barred from employment in Massachusetts as a certified nurses aide in a long-term facility. (March 1996)
- Manomet Nurses Aide - A nurses aide was charged with assault and battery and abuse of a 27-year-old mentally retarded resident of a Plymouth nursing home. Witnesses reported that the aide allegedly put the resident in a headlock to force him to attend a day program against his will. After a trial by jury, the defendant was found not guilty. (August 1995)

DIVISION STATISTICAL SUMMARY

STATISTICAL SUMMARY

Formal Investigations Initiated	53
Investigations Completed and Closed	65
Individual Indictments	63
Corporate Indictments	5
Individuals Convicted	26
Corporations Convicted	2

PATIENT ABUSE/NEGLECT CASES

Abuse & Neglect Referrals	882
Abuse & Neglect Investigations	148
Total Criminal Complaints & Indictments	8
Prosecutions Completed and Closed	12
Individuals Convicted	8
Pending Prosecutions	13

CIVIL/CRIMINAL FINANCIAL RECOVERIES

Number of Civil Recovery Cases	15
Civil Recovery	\$2,859,486.99
Number of Criminal Recovery Cases	18
Criminal Recovery	\$ 433,356.78
Total Recovery	\$3,292,833.77

Initiative/Outreach Programs

Training and Enforcement Initiatives

The Medicaid Fraud Control Unit continued to ensure that its staff emphasize current healthcare fraud investigative techniques. Some of the seminars and conferences attended by the MFCU staff included:

The National Anti-Fraud Association Annual Conference and Training Seminar; The National Association of Medicaid Fraud Control Units Annual Conference and Training Seminar; The Federal Law Enforcement Training Program for MFCU investigators; The New England Drug Diversion Conference; The Insurance Fraud Bureau's Computer Information Seminar; The Attorney General's Comprehensive In-Service Investigators Training.

Additional law enforcement associations developed or co-sponsored by the Attorney General's MFCU include:

- The Northeast Healthcare Law Enforcement Association (NHLEA) - Consisting of chief investigators from New England MFCUs, including New York and New Jersey, Massachusetts State Police Diversion Investigative Unit and federal law enforcement agencies including the Drug Enforcement Administration (DEA), the Federal Bureau of Investigations (FBI), the Internal Revenue Service (IRS) and the Office of Inspector General (OIG), this group develops joint state/federal health care fraud investigations and prosecutions. Attorney General Scott Harshbarger was honored as the first recipient of NHLEA's annual recognition award for his aggressive approach to fighting healthcare fraud.
- Metra Health Association - Representatives from the New England MFCUs, the Office of Inspector General, FBI and Medicare meet with the Association of Survey Utilization Review Systems to discuss the latest trends in analyzing and packaging utilization data for successful prosecutions.

- The Massachusetts Drug Diversion Task Force - Members from the MFCU meet with representatives from local state and federal law enforcement agencies to discuss health care drug diversion cases, pool investigative resources and develop comprehensive prosecutions.

Education/Outreach Programs

- Massachusetts Extended Care Federation -The MFCU continues to expand on its relationship with the Massachusetts Extended Care Federation. The Massachusetts Extended Care Federation, along with the Massachusetts Attorney General's Office, U.S. Attorney's Office, Massachusetts Hospital Association, Massachusetts Association of HMO's and the Home Health Care Association of Massachusetts, sponsored a health care fraud seminar on June 6, 1996 at the World Trade Center. The focus of the seminar was to educate health care providers how to prevent health care fraud and abuse in their respective industries through effective compliance programs. The seminar was the result of a major cooperative effort among all agencies. The keynote speaker for the conference was Janet Reno, United States Attorney General. Future training seminars are scheduled to educate nursing home supervisors and employees about the Attorney General's office patient/elder abuse priorities.
- Department of Public Health - The MFCU meets regularly with the officials from the Department of Public Health to discuss issues affecting the monitoring and policing of instances of elder abuse, neglect, and mistreatment in long term care facilities.
- Pharmacy Program - The MFCU's Pharmacy Coordinator lectures regularly to the state's registered pharmacists to instruct and educate on The MFCU's pharmacy enforcement program and the latest trends, laws, and regulations affecting the pharmacy community.
- New England Anti-Fraud Association - The MFCU meets quarterly with the New England Anti-Fraud Association which consists of private insurance health care fraud investigators. The MFCU has lectured the group on the importance of investigative cooperation between private and public health care enforcement to identify fraudulent providers.
- Division of Medical Assistance - The MFCU meets monthly with the Division of Medical Assistance, the agency that administers the state's Medicaid program, to discuss effective fraud review programs, referrals, and the development of health care fraud investigations.

- Drug Diversion Issues - MFCU representatives, along with the Drug Enforcement Agency and the Board of Registration in Medicine and Pharmacy, have lectured to state agencies concerning drug diversion investigation issues and concerns.

CRIMINAL BUREAU

Assistant attorneys general in the Criminal Bureau prosecute individuals and corporations for violations of the criminal laws in courts throughout the Commonwealth, and represent the Commonwealth in appeals from these convictions. In addition, attorneys in the Bureau represent the Commonwealth in federal court on collateral challenges to state criminal convictions court (habeas corpus petitions) and defend the Commonwealth's judges, district attorneys, probation, parole, and corrections officers when they are sued civilly in state and federal court by prisoners challenging their criminal convictions or the terms of their confinement.

The Bureau is comprised of 42 prosecutors and 20 support staff, including secretaries, paralegals, and financial investigators. In addition, a Criminal Investigations Division consisting of 31 Massachusetts state troopers is assigned to the Bureau to investigate allegations of criminal wrongdoing across the state.

The Criminal Bureau is organized among five major divisions: the Narcotics and Special Investigations Division, the Public Integrity Division, the Environmental Crimes Strike Force, the Appellate Division, and the Economic Crimes Division. These five divisions are grouped generally by area of practice and type of crime prosecuted. Each division is managed by a division chief, who both supervises the work of the attorneys assigned to that division and serves as senior prosecutor.

In addition to the work of its five major divisions, the Criminal Bureau combats urban violence in the state's most vulnerable urban communities through the Attorney General's "Safe Neighborhood Initiative." The Safe Neighborhood Initiative brings together prosecutors, police, and community leaders through a multi-disciplinary approach to stemming violence. This community prosecution model incorporates targeted law enforcement with violence prevention and economic revitalization. This past fiscal year, the Attorney General commenced Safe Neighborhood Initiatives in the Grove Hall Section of Roxbury and in Brockton, Massachusetts, in partnership with the Suffolk County District Attorney and the Plymouth County District Attorney.

Financial Investigation Division

The Financial Investigation Division of the Attorney General's Criminal bureau is comprised of eight financial investigative professionals. Paul Stewart, CFE is the Director. The staff has two other Certified Fraud Examiners, Two Certified Public Accountants and three Attorneys. Their job is to investigate and assist in prosecuting cases of larceny, public corruption, tax evasion, campaign finance violation, false claims, procurement fraud and special investigations. Referrals come from various state and municipal agencies as well as from private sector concerns. In addition, investigators maintain the accounting for forfeited funds seized by the Bureau's Narcotics and Special Investigations Unit, and also assist the Asset Forfeiture Unit in researching titles of forfeited property.

The Bureau is lead by a Bureau Chief and Deputy Bureau Chief, who manage the work of the five divisions and advise the Attorney General on law enforcement policy and anti-crime initiatives. Bureau Attorney for Training and Administration, Mary A. Phillips, is responsible for coordinating the grand jury, training new assistant attorneys general, and assisting the Bureau Chief with administrative and budget matters. Bureau Attorney for Policy and Legislation, Elisabeth Medvedow, spearheads the Criminal Bureau's work on statewide criminal justice policy and legislation.

Due to the Attorney General's role as chief law enforcement officer for the Commonwealth, members of the Criminal Bureau are frequently called upon to train law enforcement officers and prosecutors across the state on important and emerging criminal law issues, to prepare and draft legislation, and to take part in criminal justice reform. The Criminal Bureau also publishes quarterly a "Law Enforcement Newsletter" to advise judges, police officers, and prosecutors about statutory and case-related developments in the area of criminal law.

The case descriptions and statistics which follow reflect the many successful efforts of the Criminal Bureau staff in fiscal year 1996, and the Bureau's commitment to making a difference for the citizens of Massachusetts by combatting private and public sector fraud, crimes of violence, and environmental crime.

Notwithstanding the Bureau's many successes in FY 1996, the year was overshadowed by the tragic death of our friend and fellow member of the Criminal Bureau, Assistant Attorney General Paul McLaughlin. Paul was murdered on September 25, 1995 in West Roxbury, Massachusetts as he was returning home from work. Although the homicide remains under investigation, the possible connection between Paul's work as a gang prosecutor in Suffolk Superior Court and his violent death from a gunshot wound stunned the entire Massachusetts law enforcement community. Despite this tremendous loss to the Bureau, Paul's death has strengthened his fellow prosecutors' resolve to combat urban violence and protect the public safety, twin goals which were the benchmark of Paul's many years of service as a prosecutor.

APPELLATE DIVISION

The Appellate Division handles a variety of criminal, federal habeas corpus, state habeas corpus and other civil cases which impact criminal prosecutions and the criminal justice system itself. During the period from July 1, 1995 through June 30, 1996, the following assistant attorneys general were assigned to the Appellate Division during part or all of the year: William Meade, William Duensing, Greg Massing, Ellyn Lazar, Djuna Perkins, Gail McKenna, Nina Ross, and Pamela Hunt. The division has a paralegal, Katherine DiGennaro, and two secretarial support staff. In addition, several other Criminal Bureau assistants handled Appellate Division cases during FY 1996: Elisabeth Medvedow, Bob Sikellis, Molly Parks, Linda Murphy, and Michael Cassidy. A volunteer attorney also worked with the Division during part of the fiscal year.

The Division handled approximately 778 cases during the course of the year. Three hundred forty-four (344) new cases were opened in FY 1996, and 406 were closed.

In addition to case work, Division attorneys participate in and present training programs both for the Criminal Bureau and office-wide; and work with other Criminal Bureau attorneys on a variety of investigative, motion, trial, post conviction, and single justice matters. The Division also works closely with the District Attorneys' Offices, especially their Appellate Divisions, in identifying and

acting as a clearinghouse on issues of statewide importance and interest. Additionally, Assistant Attorney General Djuna Perkins participated in the Urban Violence program for six months prosecuting cases in the Brockton District Court.

I. SUMMARY OF FY 1996 APPELLATE DIVISION CASE STATISTICS

<u>A.Cases Handled</u>	Cases <u>Opened</u>	Cases <u>Disposed</u>	Total Cases <u>Handled</u>
A.Federal Habeas	87	104	200
B. Federal Civil	43	42	83
C. State Civil	77	106	217
D.State Habeas Corpus	37	43	79
E. 211, § 3 and other Single Justice cases	13	18	20
F. Criminal	80	89	168
G.Other	<u>7</u>	<u>4</u>	<u>11</u>
	344	406	778

The following is a comparison of case activity for the Appellate Division for the last several years:

	<u>FY</u> <u>1996</u>	<u>FY</u> <u>1995</u>	<u>FY</u> <u>1994</u>	<u>FY</u> <u>1993</u>	<u>FY</u> <u>1992</u>	<u>FY</u> <u>1991</u>
TOTAL CASES OPENED	344	341	307	351	222	161
TOTAL CASES DISPOSED	406	515*	213	282	206	N/A
TOTAL CASES HANDLED	778	747	652	649	428	N/A

*Includes 125 old, inactive cases.

The caseload of the Division continues to steadily increase. This year Appellate Division attorneys handled 778 cases, slightly more than FY 1995, over a hundred more than in FY 1994 and FY 1993, and an 80% increase over the number of cases handled in FY 1992. Despite the large number of cases handled, 406 active cases were disposed by Division attorneys, substantially more than the 213 cases closed in FY 1994, 282 cases closed in FY 1993, and is nearly twice the 206 cases closed in FY 1992.

One hundred forty-four (144) additional cases were referred by the Appellate Division to agency counsel at the Department of Correction, or the Parole Board, or to the District Attorneys.

	<u>FY</u> <u>1996</u>	<u>FY</u> <u>1995</u>	<u>FY</u> <u>1994</u>	<u>FY</u> <u>1993</u>	<u>FY</u> <u>1992</u>
B. <u>Appellate Briefs Filed</u>	63	79	54	52	56
<u>By Court</u>					
U.S. Supreme Court	3	3	2	4	7
Court of Appeals (First Circuit)	12	23	14	7	10
U.S. Bankruptcy Court	0	0	0	2	0
SJC	21	21	14	13	7
Appeals Court	<u>27</u>	<u>32</u>	<u>24</u>	<u>26</u>	<u>32</u>
	63	79	54	52	56
<u>By Case Type</u>					
Criminal	30	37	19	20	26
Federal Habeas	9	19	13	7	11
All Other Civil/ State Habeas	25	23	24	25	19

The Appellate Division's 63 briefs filed this fiscal year were fewer than the number filed last year but reflect an approximately 20% increase over the three previous years.

Briefs in the United States Court of Appeals (12) were filed in 9 habeas corpus cases and 3 federal civil actions. We were successful in all cases but one in which the Court affirmed the District Court's issuance of the writ of habeas corpus.

Two of the three briefs filed in the United States Supreme Court were written upon the request of the Court in opposition to petitions for certiorari in federal habeas corpus (Gilday) and state criminal (Power) cases. Certiorari was denied in both cases. The third brief was an amicus brief written by AAG and NAAG Supreme Court Fellow Donna Palermino in support of the United States's petition for certiorari (Ursery and \$405,089.23). Forty-two (42) other states joined us in urging the Court to

review two federal decisions in which lower courts found that double jeopardy barred the government from pursuing both asset forfeiture and criminal prosecution of narcotics offenses. The Supreme Court granted certiorari and ultimately reversed.

This year the number of briefs filed in the Supreme Judicial Court (21) equaled the highest number in five years. Twelve (12) briefs were filed in criminal cases and 9 were filed in civil matters. They concerned the constitutionality of permitting the Commonwealth to appeal a finding by a trial judge that a person is no longer sexually dangerous; the propriety of requiring only five-sixths of the jury to agree in a jury trial in a sexually dangerous person case; whether a police chief has the power to grant an officer under investigation immunity from prosecution without the knowledge or agreement of the prosecutor; whether the Parole Board can deny parole to a sex offender who does not accept responsibility for his crime and whether the Committee for Public Counsel Services may represent prisoners in civil suits; and the circumstances under which police officers executing a search warrant in a place of business may use experts to assist them to identify the items to be seized; as well as in a number of appeals from criminal convictions. We were successful in all cases that were decided in FY 1996.

The Division wrote 27 briefs which were filed in the Appeals Court, 15 in criminal cases, and 13 in civil matters, approximately the same number as in previous years, and which were as varied in subject matter as the Division's caseload. We were successful in all but two cases in the Appeals Court; one of those is pending on further review.

The Division continued its efforts to file amicus briefs on behalf of the Attorney General in cases having broad impact and importance to the criminal justice system, consistent with the Attorney General's statutory responsibilities as the chief law enforcement officer of the Commonwealth. We wrote 7 amicus briefs during FY 1996. The question whether double jeopardy principles preclude the government from both prosecuting criminal offenses and imposing civil or administrative sanctions upon the offender was a very important criminal justice issue during the past year. Apart from the brief

filed in the United States Supreme Court in support of certiorari in Ursery and \$405,089.23, the Attorney General's office played a major role in preparation of the brief on the merits in that case which was filed by the State of Connecticut. At the state level, we filed an amicus brief addressing these same issues, whether the government may both prosecute a drug offender and seek forfeiture of proceeds and instrumentabilities of drug crimes (Albano). We also wrote a brief in support of the state's right to both prosecute drunk drivers and to suspend their drivers' licenses for failing or refusing to take the breathalyzer test. (Luk and Leduc).

Amicus brief were also written on the authority of a police officer outside his jurisdiction to stop a driver suspected of operating a motor vehicle under the influence (Morrissey); the constitutionality of sex offender registry legislation (Opinion of the Justices); the circumstances under which a rape crisis counselor may refuse to reveal privileged information about a victim of sexual assault (Fuller); and the question of the payment of attorney's fees when the Commonwealth exercises its right to take interlocutory appeals from the allowance of motions to suppress evidence or dismiss charges in criminal cases (Murphy). In all cases that were decided in FY 1996, the Court adopted the arguments we made.

We appeared as amicus on behalf of the Attorney General, the Commissioner of Probation, Department of Correction and Parole Board in a case where we argued that the public interest and those of various law enforcement agencies dictated against allowing a prisoner to legally change his name (Verrill).

C. Renditions

Attorneys from the entire Criminal Bureau, at the request of the Governor's office, review the legal sufficiency of applications for Governor's warrants, at the requested by other states and those by Massachusetts District Attorneys, the Department of Correction and Parole Board. From July 1, 1995 through June 30, 1996, 137 different cases were reviewed. Whenever a person arrested on a Governor's warrant challenges the validity of the warrant, Criminal Bureau attorneys handle the habeas

corpus cases in the state and federal trial and appellate courts, and coordinate extradition of the fugitive to the requesting state.

II. FY 1996 CASE HIGHLIGHTS

A. Federal Habeas Corpus

Federal habeas corpus cases challenging state criminal convictions represent approximately 25% of the Appellate Division's cases but occupy a substantial amount of the attorneys' time. During the course of the fiscal year, the Appellate Division carried 196 federal habeas cases. Eighty-seven (87) new cases were opened, and 103 were disposed. The Commonwealth is only required to defend cases in which there is an order by the federal court to answer the petition. Division attorneys are especially proud of their work in federal habeas corpus and work closely with the District Attorneys offices that handled the prosecutions in state court. Most cases require the filing of lengthy and complex memoranda which are the equivalent of full appellate briefs. In two cases there have been evidentiary hearings in federal court. One (DiPietro) involved a claim of ineffective assistance of counsel and the other (Ely) concerns an allegation of prosecutorial failure to disclose the existence of a plea agreement with a government witness.

Among the cases handled by the Division are a number of challenges to first-degree murder convictions (Brown, Ely, Robinson, Koonce, Daughtry) in several of which the trial occurred many years ago. We were successful in having the Supreme Court deny certiorari in the habeas corpus case brought by William Gilday, convicted of the murder of a Boston police officer twenty-five years ago, and in having the First Circuit Court of Appeals deny habeas relief to James Kater upon his claim that he could not be retried for first-degree murder after his last trial resulted in a hung jury.

We appealed an order granting the writ of habeas corpus in Rossetti on the ground that double jeopardy precluded trial for conspiracy after the petitioner had been previously acquitted for the substantive offense of armed robbery. The First Circuit agreed with us that double jeopardy does not

preclude prosecution for conspiracy after an acquittal for the substantive crime, but issued the writ with the possibility of retrial because certain evidence should not have been admitted at trial.

The enactment in April 1996 of substantial revisions to the federal habeas corpus statute has occasioned a number of new issues and litigation concerning its interpretation and reach, and the Division regularly consults with assistant attorneys general from other states and the National Association of Attorneys General to share information and experiences with the new law.

B. Federal Civil Cases

The Appellate Division handled 83 federal civil matters, which primarily involved civil rights actions brought against state judges, prosecutors, clerks, probation officers, the Parole Board, and other criminal justice officials. Several cases involve representation of prosecutors who have been subpoenaed to testify or to produce their investigative or trial files, or cases where the integrity of state criminal prosecutions are at issue. In two separate cases (Kyricopoulos and Cook), convicted defendants each brought civil rights actions against virtually every state and local police and correction official, judge, clerk, prosecutor, probation officer, and appointed attorney connected with his prosecution. Despite the variety of defendants and claims, we were able to obtain dismissal of the cases prior to any time-consuming and burdensome discovery. In another case, representing a District Attorney's office, we were able to obtain a protective order preventing the disclosure of personnel records.

C. State Civil/State Habeas Cases

During FY 1996, the Appellate Division handled 79 state habeas corpus actions filed by prisoners seeking immediate release from confinement in such matters as attacks on commitments to the Treatment Center, challenges to the validity of Governor's warrants, challenges to criminal convictions and claims that parole or probation surrenders were unlawful.

In one case, a Treatment Center inmate sought habeas corpus relief ten years after his commitment on account of the procedure followed at that time. We were able to reconstruct the

original proceedings to demonstrate his claim had no merit (DeWolfe). In Zullo, a case of first impression, a parole violator claimed the Board waived jurisdiction over him by not seeking his return to Massachusetts earlier than it did. We convinced the Supreme Judicial Court to reverse the Appeals Court's order to release the petitioner and to define the factors a judge must consider when a parole violator claims delay in executing a parole revocation warrant violates his rights to due process and fundamental fairness.

The Appellate Division's civil caseload of 218 cases includes appeals from the denial of petitions for release from the Treatment Center, and appeals in all cases handled at the trial court level by agency counsel at the Parole Board, but the large majority of state civil cases involve representation of prosecutors, judges, public defenders, and other court personnel sued for actions taken in their official capacity.

Two important civil cases involved sexually dangerous person proceedings. In Sheridan, we successfully convinced the SJC to rule that in any jury trial in a SDP case, a proper verdict may be delivered when only 5/6 of the jurors agree. In Hill, the SJC held that there is no constitutional objection to permitting the Commonwealth to appeal a determination that an individual is no longer sexually dangerous, and that a person can be proved to be sexually dangerous in the absence of recent misconduct while incarcerated and where he refuses treatment.

While the District Attorneys generally represent their own interests when they are subpoenaed to testify or produce their case and investigative files in civil litigation, the Appellate Division continues to provide assistance in these cases. Additionally, we actively seek to prevent collateral attacks on criminal convictions in cases where defendants bring civil actions against prosecutors, courts, and witnesses for their actions relating to prosecutions. A trial court ruled against us in one case where it declared the vagrancy statute unconstitutional and enjoined a District Attorney from enforcing it (Benefit). In several other cases we were able to resist efforts of criminal defendants to

seek by civil actions in the nature of replevin the return of items seized from them before they could be used as evidence in criminal cases.

D. Criminal Cases

The majority of criminal cases handled by the Appellate Division are appeals from criminal convictions in prosecutions by the trial divisions of the Attorney General's Criminal Bureau. The number of cases handled this year, 168, reflects the increase in Criminal Bureau prosecutions and convictions. The Division has also represented the Commissioner of Probation in cases where a former criminal defendant has sought expungement of court and probation records (Robinson; SMF), and appeared in the trial courts in a number of criminal cases.

The appellate courts affirmed convictions or denials of motions for new trial in a number of narcotics cases, as well as murder (Schand), armed robbery (Namey), contempt (Filos), rape (Sequeira), embezzlement by a fiduciary (Dellorfano), and larceny (Fallon). We were unsuccessful arguing that a probation record should not be expunged (SMF), and in a masked armed robbery case the Appeals Court (Meuse) ordered a new trial, that case is pending on further review. In addition, in Godfroy, a sexual dangerous person commitment was vacated and resentencing was ordered in the criminal conviction.

We convinced the Supreme Court to deny certiorari in a case which involved a challenge to the propriety of a condition of probation which prohibited a person convicted in a notorious crime involving the death of a police officer from profiting from the crime of her long-time fugitive status (Power). In addition, the Supreme Judicial Court adopted the arguments we made in support of Massachusetts' ability to prosecute a murder case where the victim was kidnapped and assaulted in Massachusetts, but actually killed in New York (Lent).

E. G.L. c. 211, § 3 and Other Single Justice Matters

The Appellate Division handled 20 different cases in the single justice session of the Supreme Judicial Court. These matters often involve representation of the courts and judges, but may also

include the defense of some aspect of the criminal justice process or system. We handled several matters involving judicial orders excluding the media from parts of criminal trials, and were involved in the litigation surrounding the transfer of prisoners to Texas.

III. CRIMINAL JUSTICE INITIATIVES

- Assistant Attorney General Pamela Hunt is a member of the Massachusetts Sentencing Commission and serves as chairperson of the Commission's Committee on Intermediate Sanctions.
- Assistant Attorney General William Duensing serves on the National Association of Attorneys General (NAAG) committee on frivolous inmate litigation and was involved in drafting model state legislation and similar legislation filed in Massachusetts.
- Assistant Attorney General William Meade is the Attorney General's representative to the Criminal Justice Training Council.
- Assistant Attorneys General from the Appellate Division serve as the Attorney General's representative to the Criminal History Systems Board.
- Assistant Attorney General Pamela Hunt is a member of the Supreme Judicial Court's Standing Advisory Committee on the Criminal Rules.
- The Division provides information to the Parole Board relevant to its consideration of pardon and commutation matters and for parole decisions for those serving parole-eligible life sentences.

- Attorneys from the Appellate Division worked in cooperation with the Chief Justice of the District Court Department and the United States Attorney's Office in developing a procedure to provide for contemporaneous recording of the validity of guilty plea and admissions in the District Courts.

IV. SAAG SUPERVISION

A. Parole Board

Agency counsel at the Parole Board are designated Special Assistant Attorneys General ("SAAG") to handle the Board's litigation in the state trial courts. Appellate Division attorneys work closely with Board counsel in the defense of these matters, and handle all appeals in these cases. The Appellate Division is also involved in the many Parole Board cases which require coordination with the Department of Correction. Assistant attorneys general from the Appellate Division and the Government Bureau defend all cases concerning the Parole Board in federal court.

B. Treatment Center Litigation

Counsel at the Department of Correction have been designated as Special Assistant Attorneys General to handle all sexually dangerous person (SDP) § 9 hearings in the Superior Court. Assistant attorneys general in the Appellate Division are responsible for all appeals in these cases and are involved in supervision and monitoring of the SDP trials.

Department of Correction attorneys, under the direction and supervision of the Appellate Division, handle civil and state habeas corpus litigation filed by inmates of the Treatment Center. The Appellate Division continues to defend cases which attack the validity of the original SDP commitment or the underlying criminal conviction.

CRIMINAL INVESTIGATIONS DIVISION

The Criminal Investigations Division provides the Criminal Bureau with a corps of seasoned investigators who have a wealth of experience dealing with investigations on the State, Federal, and Municipal level and also diverse experiences from the private sector. The police and civilian investigators assigned to the Division provide a wealth of investigative experience and expertise in such areas as organized crime, narcotics trafficking, public corruption, money laundering, securities violations, tax fraud, crimes against the elderly, environmental crime and fiduciary fraud. The Criminal Investigations Division has a great working relationship with all divisions and Bureaus within the Office of the Attorney General, providing technical and investigative resources when requested. The Criminal Investigations Division also has developed outstanding cooperative working relationships with many law enforcement organizations throughout the Commonwealth. The State Police Unit assigned to the Criminal Bureau is commanded by Detective Lieutenant John Kelly, Lieutenant Robert Friend and Sergeants Walter Carlson and Dermot Moriarty (Public Corruption, Economic Crimes), Lieutenant Andrew Palombo and Sergeant Thomas Greeley (Narcotics and Special Investigations Unit), and Sergeant Brian Kennedy (Springfield Office). Lieutenant Gail Larson of the Environmental Police supervises environmental investigations. Paul Stewart is the Director of Financial Investigations with a staff of CPAs and CFEs who provide invaluable expertise in financial investigations.

A major source of pride of the division continues to be the cooperative investigations undertaken with other law enforcement, governmental or regulatory agencies. The Narcotics and Special Investigations Division, in conjunction with the Boston Police Department and Boston Housing Authority Police, conducted an extensive undercover narcotics investigation in a Charlestown public housing facility. The investigation resulted in the indictment and subsequent arrest of 18 individuals and the seizure of a substantial quantity of narcotics. This successful, cooperative effort

has done much to improve the quality of life and safety of the residents of this section of the City of Boston.

The Public Corruption Unit investigated the practice of over billing on the part of a private investigator in his dealings with the Committee for Public Counsel Services (CPCS). The over billing resulted in overcharges of several hundred thousand dollars. The investigation resulted in the subsequent indictment of the private investigator and the end of this unsavory lucrative scheme.

During FY 96, the Criminal Investigations Division accomplished the following:

Investigations	300
Arrests	255
Search Warrants	70
Stolen Property Seized	\$550,000
Background Investigations	325
Assist to Other Agencies	400
Drug Money Seized	\$183,805.86

THE ECONOMIC CRIMES DIVISION

I. Introduction

The Economic Crimes Division investigates and prosecutes all types of private sector, white collar and economic crime in state courts across the Commonwealth. The victims of these crimes take many shapes, from the vulnerable elderly individual, to the small business or large corporation. The cases handled by the division demonstrate that economic and white collar crimes cost Massachusetts working men and women hundreds of thousands of dollars annually. Yet, it is the personal toll these crimes take on individual victims that is staggering, stripping those victims of their life savings, their businesses, and ultimately, their personal futures. Throughout the past year, the Economic Crimes Division focused on three priority areas: lawyer fraud, tax crimes, and all types of financial crimes (including theft and securities fraud) which victimize both vulnerable individuals and large corporations. Cases involving financial crimes against the elderly are priority prosecutions for the Economic Crimes Division.

The assistant attorneys general in the Economic Crimes Division consist of seven attorneys, one special attorney general, and one secretary, in addition to civilian financial investigators and state police officers. The members of the division during part or all of the year consist of the following: Carol Starkey, Chief, AAG; Molly Parks, AAG; James Bryant, AAG; Kevin Brekka, AAG; Stephanie Kelly, AAG; Sarah Hartry, AAG; Lori Balboni, AAG; Stephen Paterniti, AAG; Andy Zaikis, SAAG; Olivia Blanchette, Secretary; James McFadden, Investigator; Patrick Ormond, Investigator; Brad Chase, Investigator.

In Fiscal Year 1996, the Economic Crimes Division commenced over fifty-one criminal prosecutions against those individuals, entities, and corporations that had taken advantage of their positions of power in the private sector, hurting not only the vulnerable victims who held their trust, but ultimately all of the citizens of the Commonwealth. During the same time, over fifty-eight convictions were obtained against white collar criminals and corporations, which included those

defendants that were not charged within the Fiscal Year. The attached chart reflects the statistics for the financial and tax prosecutions conducted by the Division throughout the Fiscal Year.

II. Private Sector Fraud: The Financial & Tax Prosecutions Handled By The Economic Crimes Division

A. The Financial Prosecutions

The Economic Crimes Division receives referrals from both state and federal agencies, as well as judges, attorneys, private parties, and police departments throughout the Commonwealth. The Division continues to work closely with such offices and agencies as the Board of Bar Overseers, the Criminal Investigations Bureau of the Department of Revenue, the F.D.I.C., the Secretary of the Commonwealth, the United States Attorney's Office, and various District Attorney's Offices across the state.

The investigations initiated by the Division tend to be difficult, complex white collar cases that involve the analysis and review of prolific documentation, tracing an economic crime through exposing the "paper trail" of evidence left by the white collar criminal. In order to conduct a thorough investigation of an economic fraud, extensive interviews and testimony must be obtained from all people involved or affected by the theft. In addition, most cases require the use of an expert witness to aid an assistant attorney general or investigator in evaluating the perpetrator's handwriting, the financial formula he employed, or the mental state which enabled him to perpetrate his crime.

Some highlights of the financial crimes cases prosecuted by the Economic Crimes Division in fiscal year 1996 include:

Commonwealth v. Josephine White, Bristol & Essex Superior Court.

This case involves the victimization of multiple elderly women by means of a "pigeon drop" scam in several counties throughout the Commonwealth. The defendant was able to steal approximately \$93,000.00 from the elderly women, tricking some out of their personal effects and jewelry. The defendant plead guilty to all charges in Essex Superior Court on 12/12/95.

Commonwealth v. John & Nancy Burgess, Bristol & Suffolk Superior Court.

This case involved a husband and wife team each charged with multiple counts of larceny and conspiracy. The Commonwealth alleges that the couple stole money from multiple neighbors by (1) fraudulently representing that their money would be invested in real estate purchases; and (2) falsely representing that they would invest a married couple's accumulated Individual Retirement Account money in a special IRA account with a superior rate of return. As of this writing, John Burgess is currently being held on \$100,000 cash bail. His wife, Nancy, is a fugitive at large.

Commonwealth v. Mark Gauthier, Middlesex Superior Court.

This matter involved a former Middlesex District Attorney and Chelmsford lawyer who had defrauded his wife and children of approximately \$30,000. AAG Stephanie Kelly, assisted by AAG Steve Paterniti, conducted a five-day jury trial in Middlesex Superior Court, successfully convicting this defendant on all counts of larceny, forgery, obtaining signature by false pretenses and uttering with which he had been charged.

Commonwealth v. Joseph Pereira, Bristol Superior Court.

This defendant was indicted and convicted in Bristol County for multiple scams involving Larceny, Forgery, Uttering and the Unauthorized Practice of Law on three separate occasions. After Joseph Pereira was indicted the first time, and while he was out on bail, the defendant perpetrated yet further scams, one of which involved posing as an attorney and conducting a bench trial!

Commonwealth v. London & Global, Inc., Suffolk Superior Court.

The above Joseph Pereira investigation uncovered a large Suffolk County operation conducting illegal investment scams, d.b.a. London & Global, Inc. This operation roped members of the public (primarily Asian Americans and young students) into investing large sums of money to "trade and sell" on a non-existent foreign market. These "investments" were to make the victims' money similar to the stock market. The London & Global office in downtown Boston was set up by the defendants to resemble an actual foreign exchange facility, complete with international clocks on the walls, computers showing foreign trade figures, and training sessions with "experts" in foreign trade to teach the victims how to make money. The Commonwealth alleges that this was simply an elaborate rouse to steal money.

Commonwealth v. Jason & Harriet Roberts, Norfolk Superior Court.

This matter involves the Juvenile Diabetes Chapter President and his wife, Jason & Harriet Roberts, alleged to have embezzled approximately \$300,000 from the Juvenile Diabetes Foundation, and omitting income from their state tax returns.

B. Tax Prosecutions

Although each assistant attorney general in the Economic Crimes Division handles a caseload including tax cases, one assistant attorney general, Lori Balboni, with the assistance of one special assistant attorney general, Andy Zaikis, concentrate full time on this subject area. In Fiscal Year 1996, the Tax Prosecution Unit litigated a significant number of cases in the criminal courts and conducted several long-term investigations of suspected tax crimes. Many cases were referred to the Office of the Attorney General by the Criminal Investigations Bureau of the Department of Revenue, and Investigators of that agency actively assisted the Tax Prosecution Unit in investigations and prosecutions in FY '96. The analysis, documentation and witnesses provided by the Department of Revenue were invaluable to the successful prosecution of these cases. In addition, other cases were developed by the Tax Prosecution Unit as a result of referrals from other agencies.

Additionally, in April, 1996, the Economic Crimes Division turned its collective efforts towards preparing for and completing the annual "Tax Sweep" initiative with the Criminal Investigations Bureau from the Department of Revenue. With the team work of the CIB investigators and the AAGs and SAAGs working within the Economic Crimes Division, the Grand Jury presentations that comprised Tax Sweep '96 was completed on April 9th, 1996. The resulting efforts of both offices consisted of 27 counts of tax violations returned by the Grand Jury against 15 targets for a total of 7 million dollars in unreported taxable sales or income!

This Tax Sweep year comprised a showing of one of the most diverse group of targets ever pursued for this annual effort, demonstrated by the important and serious violations charged, the backgrounds of the offenders, and the combined amount of unreported taxes.

During the entire Fiscal Year of 1996, 23 new cases were charged in the Superior Courts throughout the Commonwealth, with 18 pending cases being successfully prosecuted to completion. A couple of the tax cases prosecuted by the Division are highlighted below.

Commonwealth v. Robert Russo, Suffolk Superior Court.

Tax authorities in Montana alerted the Economic crimes Division and the Department of revenue to potential tax violations perpetrated by a Robert Russo. This defendant had been submitting fake tax returns to get refund checks for six previous years. SAAG Andy Zaikis worked with DOR investigators to indict Robert A. Russo in Suffolk County, just weeks after first learning of this information, for multiple counts of Willful Filing of False Returns and Larceny Over, totalling approximately \$10,000.

Commonwealth v. John Bolduc, Suffolk Superior Court.

This matter involves a Deputy Tax Collector for dozens of cities and towns in the Commonwealth, who is alleged to have evaded personal income taxes and failed to pay over any withholding taxes for his employees.

III. Non-case Related Initiatives of the Economic Crimes Division

Members of the Division also participated in significant training programs and speaking engagements.

* Workshop leader and volunteer attorney at Harvard Law School's Fall 1995 Trial Advocacy Workshop, held during the week of September 18, 1995.
(AAG C.Starkey)

* Speaker for the Certified Fraud Examiners on the Role of the Attorney General's Office in combatting white collar crime, held at the Parker House Hotel on Oct. 18, 1995.
(AAG C. Starkey)

* Panelist Speaker at the Harvard Law School "World of Law in Criminal Prosecutions and Defense" Panel Discussions, with fellow panelists *Robert Bennett* from Skadden, Arps, Slate Meagher & Flom, Washington D.C., *Gil Garcetti*, District Attorney from Los Angeles County, and *Penny Marshall*, Assistant Federal Defender in Charge, Wilmington, DE. Held at Harvard Law School on Nov. 1, 1995 from 7:30 to 10:00 PM.
(AAG C. Starkey)

* Guest Speaker and Mock Trial Advocate before Judge Spurlock for Boston University's Law School held at the Middlesex Courthouse, courtroom 10A, on Nov. 2, 1995 from 4:30 to 7:30 PM. Direct and cross examination of two experts during a mock civil and criminal trial were conducted, with a lecture on trial technique following the event.
(AAG C.Starkey)

* Guest Speaker at Perkins, Smith & Cohen Fraud Conference on "Criminal Law Prosecutions for Fraud at the State Level," held at Suffolk University Law School Conference Rooms for approximately 150 attendees on Jan. 29, 1996 from 5:30 to 10:00 PM.
(AAG C. Starkey)

*NAAG Committee member for President-Elect Harshbarger on Elder Issues & Initiatives.
(AAG C.Starkey)

* Subcommittee member for Attorney General's Task Force on Racial & Ethnic Bias in the Courts.
(AAG S.Hartry)

* Speaker to undergraduates at the Boston University R.E.S.P.E.C.T. Week on the topic of "Empowerment and Family Violence," held on Feb. 14, 1996.
(AAG S.Hartry)

* Guest Speaker at Massachusetts School Bank Association Annual Spring Conference to speak on the topic of "The Modern Face of White Collar Crime," held at Tri-County Technical School in Franklin, MA for approximately 250-300 attendees on April 2, 1996 from 8:30 AM to 2:00 PM.
(AAG C. Starkey)

IV. Number of Defendants Charged Or Indicted Broken By The Type of Crime:

A. Total Defendants Charged: 51.

B. Number of Counts Charged (approximate figures):

- | | |
|--|------|
| 1. Larceny Over \$250 (Including Embezzlement & False Pretense, Receiving Stolen Prop) | - 67 |
| 2. Conspiracy to Commit Larceny | - 23 |
| 3. Insurance Fraud | - 1 |
| 4. Uttering, Forgery, Counterfeiting | - 80 |
| 5. Tax crimes | - 95 |
| 6. Other | - 6 |

C. Number of Dispositions and Convictions: 58.

D. Cases Broken Down By Referral, Charge, and if the case has been disposed, By Court and Sentence:

**V. CASES CHARGED BY THE ECONOMIC CRIMES DIVISION
FISCAL YEAR 1996**

B. New Indictments & Complaints.

<u>Date</u>	<u>Case Description</u>
7/95	<p><u>Commonwealth v. Kimberly Pergola</u> (Larceny Prosecution) (AAG M. Parks)</p> <p>DEFENDANT DESCRIPTION: Defendant was a former Bookkeeper for MCLE indicted for larceny and false entry into corporate books.</p> <p>COUNTIES CHARGED: Suffolk</p> <p>CHARGES: 2 Counts Larceny over \$250 1 Count False Entry in Corporate Books</p>
7/95	<p><u>Commonwealth v. Joseph Pereira</u> (Larceny Prosecution) (AAG K. Brekka)</p> <p>DEFENDANT DESCRIPTION: Defendant indicted for larceny scam involving multiple victims.</p> <p>COUNTIES CHARGED: Bristol</p> <p>CHARGES: 2 Counts Larceny Over \$250 1 Counts Unauthorized Practice of Law</p>
7/95	<p><u>Commonwealth v. Constance Soares</u> (Larceny and Tax Prosecution) (AAG J. Bryant)</p> <p>DEFENDANT DESCRIPTION: Defendant indicted for larceny, forgery and failure to file income tax returns involving her work as a secretary and care giver for a victim suffering from Alzheimer's disease.</p> <p>COUNTIES CHARGED: Bristol</p> <p>CHARGES: 2 Counts Larceny Over \$250 4 Counts Forgery 5 Counts Failure to File Income Tax Returns</p>

8/95

Commonwealth v. Jeffrey Gruber

(Larceny Prosecution)

(AAG J. Bryant)

DEFENDANT DESCRIPTION: Defendant was charged with theft of insurance premium monies from multiple victims, some of whom are elderly, while working as a former insurance agent.

COUNTIES CHARGED: Norfolk

CHARGES: 5 Counts Larceny over \$250

11 Counts Forgery

11 Counts Uttering

10/95

Commonwealth v. Jason Roberts

(Larceny and False Tax Prosecution)

(AAG M. Parks)

DEFENDANT DESCRIPTION: Former Juvenile Diabetes Chapter President was charged with larceny and willful filing of false tax returns.

COUNTIES CHARGED: Norfolk and Suffolk

CHARGES: 4 Counts Larceny over \$250

4 Filing False Tax Returns

10/95

Commonwealth v. Harriet Roberts

(Larceny and Tax Prosecution)

(AAG M. Parks)

DEFENDANT DESCRIPTION: Former Juvenile Diabetes Chapter Treasurer was charged with larceny and willful filing of false tax returns.

COUNTIES CHARGED: Norfolk and Suffolk

CHARGES:

7 Counts Larceny over \$250

1 Counts Forgery

4 Filing False Tax Returns

10/95

Commonwealth v. Thomas Suida

(Larceny Prosecution)

(AAG J. Benzan)

DEFENDANT DESCRIPTION: This case involves three co-defendants stealing and converting bearer coupons from State Street Bank.

COUNTIES CHARGED: Suffolk

CHARGES: 3 Counts Larceny over \$250

10/95

Commonwealth v. Andrew McKnight
(Larceny Prosecution)
(AAG J. Benzan)

DEFENDANT DESCRIPTION: This case involves three co-defendants stealing and converting bearer coupons from State Street Bank.

COUNTIES CHARGED: Suffolk

CHARGES: 3 Counts Larceny over \$250

10/95

Commonwealth v. Richard Kelly
(Larceny Prosecution)
(AAG J. Benzan)

DEFENDANT DESCRIPTION: This case involves three co-defendants stealing and converting bearer coupons from State Street Bank.

COUNTIES CHARGED: Suffolk

CHARGES: 3 Counts Larceny over \$250

11/95

Commonwealth v. John M. Burgess and Nancy J. Burgess
(Larceny Prosecution)
(AAG M. Parks)

DEFENDANT DESCRIPTION: Defendants, as part of husband and wife team, indicted for larceny scam involving multiple victims and real estate transactions.

COUNTIES CHARGED: Bristol

CHARGES: 6 Counts Larceny Over \$250
4 Counts Conspiracy to Commit Larceny Over \$250.

11/95

Commonwealth v. Kurt Blaha and James Laycock
(Insurance Fraud Prosecution)
(AAG K. Brekka)

DEFENDANT DESCRIPTION: Both Defendants are indicted for fraudulently submitting an insurance claim regarding a stolen boat.

COUNTIES CHARGED: Plymouth

CHARGES: 1 Count of Filing False Maritime Report
1 Count Fraudulent Insurance Claim
1 Count Attempt to Commit a Crime.

11/95 Commonwealth v. Nancy Gonelli
(**Larceny Prosecution**)
(AAG S. Kelly)

DEFENDANT DESCRIPTION: Defendant indicted for falsifying reimbursement vouchers for allegedly job-related expenses.

COUNTIES CHARGED: Middlesex

CHARGES: 1 Count Larceny over \$250
15 Counts Uttering False Instrument
15 Counts Forgery
15 Counts False Entry in Corporate Books

1/96 Commonwealth v. Stephen Perry
(**USAO-AGO Joint Prosecution**)
(Elderly V/Ws)
(AAG Kelly)

DEFENDANT DESCRIPTION: Former investment advisor charged with defrauding former clients by convincing them to invest in phony investment schemes.

COUNTIES CHARGED: N/A (Federal District Court)

CHARGES: Mail Fraud
Wire Fraud
Interstate Transportation of Stolen property

2/96 Commonwealth v. John M. Burgess
(**Larceny Prosecution**)
(Elderly V/Ws)
(AAG Parks)

DEFENDANT DESCRIPTION: Defendant, as part of a husband and wife team, indicted for larceny scam involving multiple victims in connection with fake real estate transactions.

COUNTIES CHARGED: Norfolk

CHARGES: 3 Counts of Larceny Over \$250

2/96

Commonwealth v. Joseph Pereira
(Larceny Prosecution)
(AAG Brekka)

DEFENDANT DESCRIPTION: Defendant is Fall River Businessman indicted for misrepresenting himself as an agent of Housing and Urban Development, persuading a small business owner to hand over \$10,000 as part of an application to obtain a loan to refurbish his restaurant.

COUNTIES CHARGED: Suffolk

CHARGES: 1 Count of Larceny Over \$250

2/96

Commonwealth v. Robert Russo
(Tax Prosecution)
(SPAAG Zaikis)

DEFENDANT DESCRIPTION: Defendant, a Peabody, MA resident, was indicted for Willful Filing False Tax Returns and Larceny Over \$250 for submitting eight fraudulent tax returns using aliases and fake W-2s, and then converting the refund checks subsequently received based on those fraudulent returns.

COUNTIES CHARGED: Suffolk

CHARGES: 8 Counts of Willful False Filing
of Tax Returns
7 Counts of Larceny Over \$250

3/96

Commonwealth v. Todd Taylor
(Larceny Prosecution)
(AAG M.Cassidy)

DEFENDANT DESCRIPTION: Defendant was an employee who stole \$100,000 while working for the New England Conservatory of Music.

COUNTIES CHARGED: Suffolk

CHARGES: 4 Counts of Larceny Over

3/96

Commonwealth v. John M. Burgess and Nancy J. Burgess
(Larceny Prosecution)
(AAG Parks)

DEFENDANT DESCRIPTION: Defendant John Burgess is indicted for larcenies from four victims, and his wife Nancy Burgess is indicted in connection with two of those. One case relates to a fraudulent mortgage scheme, one case to a fraudulent business partnership, and the other cases involve fraudulently obtaining/using funds intended for use as real estate deposits.

COUNTIES CHARGED: Middlesex

CHARGES: 6 Counts Larceny Over \$250
2 Count Conspiracy

4/96

Commonwealth v. Scott Sutherland
(Tax Prosecution)
(AAG S.Kelly)

DEFENDANT DESCRIPTION: This defendant ran sole proprietorship and is charged with evasion, false returns, and failure to account for and pay sales tax.

COUNTIES CHARGED: Suffolk

CHARGES: Tax Evasion Willful Failure to Account For & Pay Over Sales Tax
Filing False Returns

4/96

Commonwealth v. Paul DeRoche
(Tax Prosecution)
(AAG S.Kelly)

DEFENDANT DESCRIPTION: This defendant is a former CPA who failed to file returns.

COUNTIES CHARGED: Suffolk

CHARGES: Failure to File

4/96

Commonwealth v. Leonard Amaral
(Tax Prosecution)
(SPAAG A. Zaikis)

DEFENDANT DESCRIPTION: Tax protestor who was prosecuted by this office and sent to jail has continued not to file returns since his release from incarceration.

COUNTY CHARGED: Suffolk

CHARGES: 4 Counts Willful Failure To File State Income Tax Returns

4/96

Commonwealth v. Donald Constant
(Tax Prosecution)
(SPAAG A. Zaikis)

DEFENDANT DESCRIPTION: New Bedford area attorney who has evaded taxes through the filing of false tax returns and failure to file withholding tax returns for his employees.

COUNTY CHARGED: Suffolk

CHARGES: 4 Counts Willful Attempt To Evade Income Taxes
3 Counts Filing False Tax Returns
5 Counts Willful Account For Withholding Taxes

4/96

Commonwealth v. William Dispirito
(Tax Prosecution)
(SPAAG A. Zaikis)

DEFENDANT DESCRIPTION: Owner of several textile corporations who withheld taxes from his employees' wages but never turned over the taxes to the state while also failing to file excise tax returns for his corporations.

COUNTY CHARGED: Suffolk

CHARGES: 1 Count Willful Failure To Account For & Pay Over
Withholding Taxes
1 Count Failure To File Corporate Excise Tax Returns

4/96

Commonwealth v. Arthur Stephen Lane

(Tax Prosecution)

(SPAAG A. Zaikis)

DEFENDANT DESCRIPTION: Marketing consultant who failed to file any returns for several years.

COUNTY CHARGED: Suffolk

CHARGES: 4 Counts Willful Failure To File State Income Tax Returns

4/96

Commonwealth v. Scott F. Sidell

(Tax Prosecution)

(SPAAG A. Zaikis)

DEFENDANT DESCRIPTION: Operations manager who failed to file any returns for several years.

COUNTY CHARGED: Suffolk

CHARGES: 4 Counts Willful Failure To File State Income Tax Returns

4/96

Commonwealth v. Mark N. Schlafman

(Tax Prosecution)

(SPAAG A. Zaikis)

DEFENDANT DESCRIPTION: Business executive who filed false tax returns for several years.

COUNTY CHARGED: Suffolk

CHARGES: 3 Counts Willful Filing Of False Income Tax Returns

4/96

Commonwealth v. Harvey Brower

(Tax Prosecution)

(SPAAG A. Zaikis)

DEFENDANT DESCRIPTION: Disbarred attorney who earned and stole funds for several years from former clients while paying no income taxes on the amounts.

COUNTY CHARGED: Suffolk

CHARGES: 3 Counts Willful Attempt To Evade and Defeat Income Taxes

4/96
Commonwealth v. Edward Weld
(Tax Prosecution)
(SPAAG A. Zaikis)

DEFENDANT DESCRIPTION: Business owner who failed to file any income tax returns for several years.

COUNTY CHARGED: Suffolk

CHARGES: 6 Counts Willful Failure To File State Income Tax Returns

4/96
Commonwealth v. Manuel Reposo
Commonwealth v. L.H. Burlingame, Inc.
(Tax Prosecution)
(SPAAG A. Zaikis)

DEFENDANT DESCRIPTION: President and owner of corporation that ran garden and tool supply stores for several years while failing to account for and pay over sales and withholding taxes and failing to file excise tax returns.

COUNTY CHARGED: Suffolk

CHARGES: 1 Count Willful Failure To Account For & Pay Over Withholding Taxes
1 Count Willful Failure To Account For & Pay Over Sales Taxes
1 Count Failure To File Corporate Excise Tax Returns (Manuel & the corporation)

4/96
Commonwealth v. Carole Caron
(Tax Prosecution)
(SPAAG A. Zaikis)

DEFENDANT DESCRIPTION: Carpet store owner who operated for several years without paying over any collected sales taxes.

COUNTY CHARGED: Suffolk

CHARGES: 1 Count Willful Failure To Account For & Pay Over Sales Taxes

4/96

Commonwealth v. Richard J. Shaer
(Tax Prosecution)
(AAG S.Hartry)

DEFENDANT DESCRIPTION: This case involves failure to pay income taxes, where the taxpayer consistently filed yearly returns that indicated a substantial liability, but neglected to include a check with the returns.

COUNTIES CHARGED: Suffolk

CHARGES: 4 Counts Failure To Pay

4/96

Commonwealth v. John Bolduc
(Tax Prosecution)
(SPAAG A. Zaikis)

DEFENDANT DESCRIPTION: Deputy tax collector for dozens of cities and towns in the state, this defendant evaded personal income taxes and failed to pay over any withholding taxes for his employees.

COUNTY CHARGED: Suffolk

CHARGES: 4 Counts Willful Filing Of False Income
Tax Returns
4 Counts Willful Attempt To Evade Income Taxes
1 Count Willful Failure To Account For Withholding Taxes

4/96

Commonwealth v. Steve Button
(Tax Prosecution)
(SPAAG L. Balboni)

DEFENDANT DESCRIPTION: Defendant indicted for filing no state income taxes while operating a video production business and receiving more than \$550,000 in receipts during a 5 year period.

COUNTIES CHARGED: Suffolk

CHARGES: 5 Counts Willful Failure To File Taxes

Commonwealth v. Domingo Pena and Domingo's Olde
Restaurant
(Tax Prosecution)
(AAG K.Brekka)

DEFENDANT DESCRIPTION: This defendant Pena is the owner and president of Domingo's Olde Restaurant. Pena operated the restaurant in E. Falmouth and was responsible for the bookkeeping and payment of taxes. The defendants are charged in regard to unpaid meals taxes.

COUNTIES CHARGED: Suffolk

CHARGES: 1 Count Willfully Evading Meals Taxes
1 Count Failure to Pay Meals Taxes

Commonwealth v. John G. Curtis
(Larceny Prosecution)
(AAG K.Brekka)

DEFENDANT DESCRIPTION: This defendant was the head of Star Market's Maintenance Department, in charge of all re-supply and purchasing orders. In that capacity, he misappropriated funds that were made payable to Star Market.

COUNTIES CHARGED: Suffolk

CHARGES: 1 Count Larceny Over \$250

Commonwealth v. Melinda L. Lowe
(Tax Prosecution)
(AAG Parks)

DEFENDANT DESCRIPTION: Defendant Melinda Lowe was the bookkeeper for J & M Taylor, Co., Inc., a close corporation which runs 3 motels in Falmouth. Lowe was the corporate employee responsible for filing returns for and paying over room occupancy tax. In 1991, she failed to file and to pay over the taxes owing for 3 monthly periods; in 1992, she failed to file and to pay taxes for 5 periods; and in 1993, she failed to pay any taxes. In all, the taxes not paid exceeded \$250,000.

COUNTIES CHARGED: Suffolk

CHARGES: 3 Counts Willful Failure to Account for
and Pay Over Room Occupancy Taxes
3 Counts Willful Failure to File Room Occupancy Tax Returns.

5/96

Commonwealth v. J & M Taylor Co., Inc.

(Tax Prosecution)

(AAG Parks)

DEFENDANT DESCRIPTION: See defendant Melinda Lowe above.

COUNTIES CHARGED: Suffolk

CHARGES: 3 Counts Willful Failure to Account for and Pay Over Room Occupancy Taxes.

6/96

Commonwealth v. Shing He "Ed" Lau, Rebecca Mok Lau, Odon "Danny" DoVale, Man Kin "Daily" Chan, Po Foon "Tim" Lam, Hus Pei Chiang, London and Global, Inc.

(Larceny Prosecution)

(AAG K. Brekka; Jeremy Silverfine; John Grossman)

DEFENDANT DESCRIPTION: Defendants were integral participants in the London and Global currency investment scam.

COUNTIES CHARGED: Suffolk,

CHARGES: Larceny, G.L. c. 266, § 30 (4 counts);
Keeping a Bucket Shop, G.L. c. 271, § 36 (4 counts);
Securities Fraud, G.L. c. 110A, § 101 (4 counts);
False Corporate Records, G.L. c. 266, § 92 (1 count);
Conspiracy, G.L. c. 274, § 7 (6 counts);
Perjury, G.L. c. 268 § 1 (1 count).

VI. CASES DISPOSED FISCAL YEAR 1996

Conviction Date

Case Description

7/95

Commonwealth v. Orville P. Stammen

(Larceny Prosecution)

(AAG Parks)

COURT: Suffolk Superior Court

JUDGE: Thayer Fremont-Smith

REFERRAL: N/A

CHARGES: 1 Count Larceny Over \$250
1 Count Receiving Stolen Property
1 Count Forgery
1 Count Uttering
1 Count Counterfeiting a Driver's License

SENTENCE: 2 years HOC on Larceny charge, with 1 year HOC from and after, and 2 years probation with restitution on remaining charges.
\$50 Victim/witness fee.

7/95

Commonwealth v. Paul Davis
(Larceny/Insurance Fraud Prosecution)
(AAG Brekka)

COURT: Worcester Superior Court
JUDGE: Snyder
REFERRAL: IFB
CHARGES: 1 Count Larceny Over \$250
1 Count Insurance Fraud
1 Count Forgery
1 Count Uttering

SENTENCE: 1 Year HOC, sentenced suspended for 1 year, \$4,000 restitution, and \$500 fine. Unsupervised probation.
No victim witness fee. Waived by court.

7/95

Commonwealth vs. John H. Rogers, III
(Tax Prosecution)
(AAG Kelly)

COURT: Suffolk Superior Court
JUDGE: Margaret Hinkle
REFERRAL: DOR
CHARGES: Willful Failure to File Taxes
SENTENCE: 6 months HOC, 3 days to serve, balance sentenced suspended for 2 years. Cooperate with DOR's Civil Audit and Recovery Division to assess back taxes, probation fee.
\$50 Victim/witness fee.

7/95

Commonwealth vs. Raymond Shimkus
(Larceny and Tax Prosecution)
(AAG Zaikis)

COURT: Suffolk Superior Court
JUDGE: Borenstein
REFERRAL: DOR
CHARGES: 1 Count Larceny over \$250
1 Count Sale of Unregistered -Securities
1 Count Tax Evasion
1 Count Filing of False Returns

SENTENCE: 5 Years probation, full
restitution to larceny
victims.
\$50 Victim/witness fee.

8/95

Commonwealth vs. Joseph Valeri
(Larceny Prosecution)
(AAG Bryant)

COURT: Suffolk Superior Court
JUDGE: Borenstein
REFERRAL: N/A
CHARGES: 9 Counts Larceny Over \$250
2 Counts of False Entry

SENTENCE: 1 Year HOC, and 400 hours of community service. \$5,000 fine
and \$50 victim/witness fee.

8/95

Commonwealth vs. James June
(Larceny Prosecution)
(AAG Zaikis)

COURT: Suffolk Superior Court
JUDGE: Freemont-Smith
REFERRAL: DOR
CHARGES: 1 Count Larceny Over \$250

SENTENCE: 4 Years, 364 days to 5 years state prison, \$50 victim/ witness
fee.

9/95

Commonwealth vs. Joseph A. Lombardi, Sr.
(Tax Prosecution)
(AAG Kelly)

COURT: Suffolk Superior Court
JUDGE: DOR/CIB
REFERRAL: DOR
CHARGES: 4 Counts Willful Failure to File State Taxes
SENTENCE: 1 Year HC, suspended for 2 years. To cooperate with DOR
for payment of tax liability, \$50 victim/witness fee.

10/95

Commonwealth vs. Walter Downing
(Insurance Fraud Prosecution)
(AAG Brekka)

COURT: Middlesex Jury of Six
JUDGE: Covan
REFERRAL: IFB
CHARGES: 1 Count Insurance Fraud
1 Count Attempt to Commit a Crime.

SENTENCE: 1 Year probation, \$500
restitution. Victim/witness
fee waived by court.

10/95 Commonwealth vs. E. Paul Tinsley
(Tax Prosecution)
(AAG Zaikis)

COURT: Hampden Superior Court
JUDGE: Welch
REFERRAL: DOR
CHARGES: 1 Count Filing False Claims

SENTENCE: \$10,000 fine, \$54,000 restitution, and 200 hours community
service. \$50 Victim/ witness fee.

10/95 Commonwealth vs. Insurance Cost Control
(Tax Prosecution)
(AAG Zaikis)

COURT: Hampden Superior Court
JUDGE: William Welch
REFERRAL: DOR
CHARGES: 2 Counts Filing False Claims

SENTENCE: \$20,000 fines; \$71,000 restitution. \$50 Victim/ witness fee.

10/95 Commonwealth vs. Debra Smith
(Larceny Prosecution)
(AAG Kelly)

COURT: Hingham District Court
JUDGE: Hurley
REFERRAL: N/A
CHARGES: 1 Larceny Over \$250

SENTENCE: 2 Years, 60 days to serve. Balance suspended for 3 years.
Stayed for 1 week. Restitution \$12,212, drug testing and
counseling. Ordered that the defendant not
have sole authority over employer's non-personal funds during
probation.

10/95

Commonwealth vs. David A. Wall
**(Larceny/Worker's Compensation
Prosecution)**
(AAG Kelly)

COURT: Suffolk Superior Court
JUDGE: Volterra
REFERRAL: City of Boston Worker's Compensation Service CID/PPB
CHARGES: 1 Count Attempted Larceny
3 False Claim Against Commonwealth
2 Counts Larceny Over 2
Counts Worker's Compensation Fraud

SENTENCE: 1 Year HC, 6 months to serve, balance suspended; alcohol treatment and counseling, \$30 probation fee to run concurrent as to each count.

10/95

Commonwealth vs. David Bourinot
**(Worker's Compensation
Prosecution)**
(AAG Brekka)

COURT: Malden District Court
JUDGE: Covin
REFERRAL: IFB
CHARGES: Worker's Compensation Fraud

SENTENCE: Sentenced to 1 year probation \$5,000 restitution or 500 hours community service.
Victim/witness fee waived by court.

10/95

Commonwealth vs. Thomas Wolpert
(Tax Prosecution)
(AAG Zaikis)

COURT: Suffolk Superior
JUDGE: Volterra
REFERRAL: DOR
CHARGES: 1 Count Willful Failure to Account and Pay Over Sale Taxes

SENTENCE: \$5,000 fine, \$50 victim/witness fee.

10/95

Commonwealth vs. John I. Anzalone
(Larceny Prosecution)
(AAG Starkey)

COURT: Suffolk Superior
JUDGE: Volterra
REFERRAL: Norfolk District Attorney's Office
CHARGES: 16 Larceny Over
2 Counts Uttering
3 Larceny Relating to Banks

SENTENCE: Common & Notorious Thief
Adjudication on 001, 002, 003 - 9-10 years; MCI Cedar Junction, suspended for 5 yrs., w/probationary conditions that 1) \$10,000 payment up front; 2) \$750 direct payment from employer to probation per month; 3) order of 5 yrs. probation to be extended for 5 additional years until restitution is paid in full; 4) defendant to be surrendered to the 9-10 year sentence if he either fails to pay monthly restitution, or does anything to harm his ability to pay \$750 restitution; 5) \$750 per month payments to increase to \$1,000 per month after federal restitution paid in full; and 6) \$50 victim-witness fee.

10/95

Commonwealth vs. Jane P. McNally
(Tax Prosecution)
(AAG Zaikis)

COURT: Suffolk Superior
JUDGE: Volterra
REFERRAL: DOR
CHARGES: 4 Counts Willful Failure to File State Income Tax Returns

SENTENCE: Probation 1 year, ordered to pay a criminal fine of \$5,000 and will still be responsible for the payment of \$10,000 in back taxes along with interest and civil penalties. \$50 Victim/witness fee.

10/95

Commonwealth vs. Philip H. Smith
(Tax Prosecution)
(AAG Zaikis)

COURT: Suffolk Superior
JUDGE: Volterra
REFERRAL: DOR
CHARGES: Failure to Pay Sales Taxes

SENTENCE: Pled guilty to willfully failing to account for and pay over sales taxes, ordered to pay a criminal fine of \$5,000 and will still be responsible for the payment of back taxes along with interest and civil penalties. \$50 Victim/witness fee.

10/95

Commonwealth vs. Geno Impemba
(Public Corruption Prosecution)
(AAG Kelly)

COURT: Middlesex Superior
JUDGE: Chernoff
REFERRAL: Massachusetts State Police/US Secret Service
CHARGES: 11 Counts Counterfeiting

SENTENCE: 1 Year HOC, 90 days to serve, balance suspended for 3 years probation on one 10 count indictment, and to 3 to 5 five years at MCI Cedar Junction, suspended for 3 years of probation, on a second indictment, to run from and after the first sentence. The judge further ordered that the defendant perform 100 hours of community service.
\$50 Victim/witness fee.

10/95

Commonwealth vs. John W. Kiley, Jr.
(Tax Prosecution)
(AAG C. Starkey)

COURT: Suffolk Superior Court
JUDGE: King
REFERRAL: N/A
CHARGES: 9 Counts False Filing of Taxes

SENTENCE: Two 1/2 years to HOC, suspended for 3 years of probation, with a total of \$100,000 fines, ordered to pay \$25,000 up front in certified check, the remaining \$75,000 to be paid probation on a schedule they are to determine.

10/95

Commonwealth vs. Atlantic Broom Service, Inc.

(Tax Prosecution)

(AAG Starkey)

COURT: Suffolk Superior Court
JUDGE: King
REFERRAL: N/A
CHARGES: 1 Count False Filing of
Corporate Taxes
1 Count Failure to Pay Sales Tax
SENTENCE: Guilty all counts. Sentence imposed on president and
owner of company, John W. Kiley, Jr.

11/95

Commonwealth v. Richard C. Tribuna

(Tax Prosecution)

(AAG Parks)

COURT: Suffolk Superior Court
JUDGE: Rouse
REFERRAL: DOR
CHARGES: 1 Count Willful Filing False Return
11 Counts Filing False Claims Against The
Commonwealth
SENTENCE: 2 1/2 years HC, 6 mos. to serve, balance suspended for
3 years of probation, to be served from and after federal
sentence. Restitution of \$2,258.00.
\$50 v/w fee.

11/95

Commonwealth vs. Kevin Aliengena

(Tax Prosecution)

(AAG Zullas)

COURT: Suffolk Superior Court
JUDGE: Volterra
REFERRAL: DOR
CHARGES: 4 Counts Willful Failure to File State Tax Returns
SENTENCE: 6 mos. HC, suspended for 3 years; \$4,000 fine plus
\$1,000 surfine, and payment of back taxes and fines.

11/95

Commonwealth vs. Kimberly A. Pergola

(Larceny Prosecution)

(AAG Parks)

COURT: Suffolk Superior Court
JUDGE: Volterra
REFERRAL: N/A

CHARGES: 2 Counts Larceny Over \$250;
1 Count Making False Entries in Corporate Books

SENTENCE: 2 years HC, suspended for 1 year with probation,
\$75,000 restitution paid forthwith. Concurrent sentence
imposed of 1 year HC, suspended for 1 year. \$50 v/w
waived by Judge.

11/95

Commonwealth v. Jocelyn Gaston
(Larceny/Insurance Fraud Prosecution)
(AAG Brekka)

COURT: Worcester District Court
JUDGE: Benton
REFERRAL: IFB
CHARGES: 1 Count Motor Vehicle Fraud
1 Count Attempted Larceny Over \$250

SENTENCE: 6 mos. probation; \$1,000 restitution with concurrent
sentence of 6 mos. probation. \$50 v/w fee waived by
Judge.

11/95

Commonwealth v. Fritz Molard
(Insurance Fraud Prosecution)
(AAG Brekka)

COURT: Worcester District Court, Jury Session
JUDGE: Fox
REFERRAL: IFB
CHARGES: 1 Count Motor Vehicle Insurance Fraud
1 Count Attempt to Commit a Crime.

SENTENCE: 2 Years HC, 6 mos. to serve, balance suspended with
supervised probation, \$1,500 restitution.
\$50 v/w fee waived by Judge.

11/95

Commonwealth v. Kenneth Chambers
(DET Prosecution)
(AAG Kelly)

COURT: Lowell District Court
JUDGE: Mori
REFERRAL: DET
CHARGES: 1 Count Attempted Larceny Over \$250

SENTENCE: 1 year probation, \$680 restitution plus interest and penalties.
\$50 v/w fee.

11/95

Commonwealth v. John D. DiVecchia
(DET Prosecution)
(AAG Kelly)

COURT: Woburn District Court
JUDGE: Gilgun
REFERRAL: DET
CHARGES: 2 Counts of Unemployment Fraud

SENTENCE: 1 year probation, \$492 restitution plus interest and penalties.
\$50 v/w fee.

11/95

Commonwealth v. Paul Malfy
(DET Prosecution)
(AAG Kelly)

COURT: Woburn District Court
JUDGE: Gilgun
REFERRAL: DET
CHARGES: 1 Count of Unemployment Fraud

SENTENCE: 1 year probation, \$185 restitution plus interest and penalties.
\$50 v/w fee.

11/95

Commonwealth v. Kenneth Swart
(DET Prosecution)
(AAG Kelly)

COURT: Woburn District Court
JUDGE: Gilgun
REFERRAL: DET
CHARGES: 1 Count Unemployment Fraud

SENTENCE: 1 year probation, \$180 restitution, plus interest and penalties.

11/95

Commonwealth v. Donald Rathburn
(DET Prosecution)
(AAG Kelly)

COURT: Woburn District Court
JUDGE: Gilgun
REFERRAL: DET

CHARGES: 2 Counts Unemployment Fraud

SENTENCE: 1 year probation, \$410 restitution plus interest penalties.
\$50 v/w fee.

11/95

Commonwealth v. Donald Rathburn
(DET Prosecution)
(AAG Kelly)

COURT: Lowell District Court
JUDGE: Mori
REFERRAL: DET
CHARGES: 1 Count Unemployment Fraud

SENTENCE: 1 year probation, \$410 restitution plus interest penalties.
\$50 v/w fee.

11/95

Commonwealth v. Kenneth Swart
(DET Prosecution)
(AAG Kelly)

COURT: Lowell District Court
JUDGE: Mori
REFERRAL: DET
CHARGES: 1 Count Unemployment Fraud

SENTENCE: 1 year probation, \$199 restitution, plus interest and penalties.

11/95

Commonwealth v. Josephine White
(Larceny Prosecution)
(AAG Parks)

COURT: Essex Superior Court

JUDGE: Grasso
REFERRAL: N/A
CHARGES: 13 Counts Larceny Over \$250
3 Counts Forgery
3 Counts Uttering
1 Count Attempted Larceny Over \$250.

SENTENCE: Adjudged Common & Notorious Thief; 12-8 years state prison, 6 years to serve, balance suspended for 5 years, to be served from and after 15 year Connecticut sentence.
\$50 v/w fee.

11/95

Commonwealth v. William Stadelmann
(Tax Prosecution)
(AAG Zaikis)

COURT: Newbury Superior Court
JUDGE: Rouse
REFERRAL: N/A
CHARGES: 5 Tax Evasion

SENTENCE: 4-5 year suspended sentenced, probation for 4 years, ordered to pay criminal fine of \$100,000 and to provide 1,000 hours of electrical work to non-profit agencies.
\$50 v/w fee.

11/95

Commonwealth v. Group Benefits Strategies
(Tax Prosecution)
(AAG Zaikis)

COURT: Suffolk Superior Court
JUDGE: Volterra
REFERRAL: N/A
CHARGES: 1 Count Corporate Tax Evasion
2 Counts False Tax Returns
SENTENCE: \$10,000 fine on each totalling \$20,000.

11/95

Commonwealth v. E. Paul Tinsley

(Tax Prosecution)

(AAG Zaikis)

COURT: Suffolk Superior Court
JUDGE: Volterra
REFERRAL: N/A
CHARGES: 1 Count Corporate Tax Evasion

SENTENCE: \$5,000 fine

12/95

Commonwealth v. Ralph DeFeo

(Larceny/Worker's Compensation Fraud Prosecution)

(AAG Kelly)

COURT: Boston Municipal Court
JUDGE: Somerville
REFERRAL: PERA
CHARGES: 1 Count Worker's Compensation Fraud
1 Count Larceny Over \$250.

SENTENCE: Continued without a finding of
1 year on each, restitution of
\$7,252.57 for both totalling \$14,504.14.

1/96

Commonwealth v. Philip N. Burgess, Jr.

(Tax prosecution)(Elderly V/Ws)

(AAG Bryant)

COURT: Suffolk Superior Court
JUDGE: Bohn
REFERRAL: DOR
CHARGES: 1 Count Willful Failure To
Turn Over and Pay Fuel Oil Taxes, amended to Failure
To File Taxes as part of Agreed Upon Plea
Recommendation.

SENTENCE: 14 days in the House of
Correction imposed, to be served on weekends, with full
and immediate restitution to be paid forthwith in the
amount of \$48,000.00.

Commonwealth v. Shaun P. Corcoran**(Larceny Prosecution)**

(AAG Parks)

COURT: Middlesex Superior Court**JUDGE:** Zobel**REFERRAL:** Securities Division

CHARGES: 13 Counts Larceny Over \$250
 3 Counts Sale of Securities by Unregistered Person
 3 Counts Fraudulent Offer/Sale of Securities
 2 Counts Larceny by Check

SENTENCE: 6-10 years at MCI Cedar Junction committed, followed by 2.5 - 3 years at MCI Cedar Junction suspended for 10 years.

3/96

Commonwealth v. S & C Concrete Floors &Company, Inc.**(DET Prosecution)**

(AAG Kelly)

COURT: Middlesex Superior Court**JUDGE:** Donovan**REFERRAL:**

CHARGES: 1 Count Failure to Pay Prevailing Wages
 1 Count Failure to Keep True and Accurate Records

SENTENCE: Pled guilty to charges. Failure to Pay Prevailing Wages - Received 6 months debarment and \$10,000 fine; Failure to Provide True and Accurate Records - Received 6 months debarment and \$2,000 fine; Failure to Keep True and Accurate Records - Received 6 months debarment and \$2,000 fine.

3/96

Commonwealth v. Stephen Hill**(DET Prosecution)**

(AAG Kelly)

COURT: Middlesex Superior Court**JUDGE:** Donovan**REFERRAL:** DET

CHARGES: 1 Count Failure to Pay Prevailing Wages
 2 Counts Failure to Provide True and Accurate Records
 1 Count Failure to Pay Unemployment Contributions
 1 Count Failure to Provide with Worker's Compensation Insurance
 2 Counts Unemployment Fraud
 2 Counts Larceny Under \$250

SENTENCE: Received 6 months debarment and \$14,000 fine; 1 year HOC suspended for 5 years if all monies paid, suspended for 2 years, \$12,565 restitution plus interest, both Stephen and Christopher Hill jointly severally liable. Other charges concurrent with the latter plus restitution and fines.

3/96

Commonwealth v. Irving Shubert
(Larceny/Insurance Fraud Prosecution)
(AAG Brekka)

COURT: Norfolk Superior Court
JUDGE: Hamlin
REFERRAL: Insurance Fraud Bureau
CHARGES: Suffolk - 5 Counts Larceny over \$250.00
5 Counts Filing Fraudulent Motor Vehicle Insurance Claim
4 Counts Larceny Under \$250
1 Count Attempt to Commit a Crime
Norfolk - 6 Counts Larceny over \$250.00
7 Counts Filing Fraudulent Motor Vehicle Insurance Claim
4 Counts Larceny Under \$250
3 Counts Attempt to Commit a Crime

SENTENCE: 59 days incarceration, five years probation, three months bracelet program, 100 hours community service and \$56,000 restitution.
Victim witness fee ordered.

3/96

Commonwealth v. Ronald Arnott
(Larceny/Medicaid Fraud Prosecution)
(AAG Hartry)

COURT: Suffolk Superior Court
JUDGE: McDaniel
REFERRAL: N/A
CHARGES: 4 Counts Larceny Over \$250
5 Counts Medicaid False Claims

SENTENCE: 3 to 5 years State Prison suspended for 10 years with supervised probation, 100 hours community service per year of probation, \$120,000.00 restitution, provide \$30,000 of shoe inventory to homeless shelters across the state, \$50 victim witness fee.

Commonwealth v. James Morgan,**(Larceny Prosecution)**

(co-defendant to Thomas Spencer)

(AAG Brekka)

COURT: Barnstable Superior**JUDGE:** O'Neill**REFERRAL:****CHARGES:** 1 Count Larceny over \$250.00

1 Count Receiving Stolen Property (1 count, filed without a change of plea)

SENTENCE: 3-5 years State Prison,
Suspended; 500 hours community service. Victim witness fee ordered. The community service will be performed in Essex County. The plea was in Barnstable, but the Defendant lives in New Hampshire. The Probation Department will be making the determination of the program for which the Defendant will serve.

Commonwealth v. Joseph Pereira,**(Larceny Prosecution)**

(AAG Kevin Brekka co-counsel

with Jeremy Silverfine)

COURT: Taunton Superior**JUDGE:** Hely**REFERRAL:** Fall River, State Police**CHARGES:** 12 Counts Larceny over \$250.00

1 Count Unauthorized practice of law

3 Counts Forgery

2 Counts Uttering of a forged instrument

1 Count Uttering of a

worthless bank bill

SENTENCE: The defendant was sentenced to four consecutive sentences of 2 years-6 months to 2 years-7 months, 15 months to serve, \$119,000.00 restitution, \$60,000.00 of which was paid on the date of sentencing, the balance paid in increments 5,000.00 every 6 months.
Probation for 7 years.
Victim witness fee ordered.

Commonwealth v. Weld
(Tax Prosecution)
 (SPAAG Zaikis)

COURT: Suffolk Superior
JUDGE: Lopez
REFERRAL: DOR
CHARGES: 6 Counts Failure to File Tax
 Returns

SENTENCE: \$12,000 fine (\$2,000 per year) and Guilty finding as to all counts. Defendant ordered to pay fine in full by 5/2/96.

Commonwealth v. Richard DiChiara,
(Larceny/Worker's Compensation Fraud
Prosecution)
 (AAG Brekka)

COURT: Middlesex Superior
REFERRAL: IFB
CHARGES: 1 Count Larceny over \$250
 1 Count Worker's Compensation Fraud

Commonwealth v. Kurt Blaha and James
Laycock,
(Insurance Fraud Prosecution)
 (AAG Brekka)

COURT: Hingham District
JUDGE: Dineen
REFERRAL: Environmental Police, Marine
 Division
CHARGES: Laycock - 1 Count Filing a False Maritime Report
 1 Count Fraudulent Insurance Claim
 1 Count Attempt to Commit a Crime
 1 Count Conspiracy

CHARGES: Blaha - 1 Count Filing a False
 Maritime Report
 1 Count Fraudulent Insurance Claim

Commonwealth v. Guido Petrosinelli
Commonwealth v. Donuts of Swansea, Inc.
(Tax Prosecution)
 (SPAAG Zaikis)

COURT: Suffolk Superior Court
JUDGE: Freemont-Smith
REFERRAL: DOR
CHARGES: 1 Count Willful Failure To
 Account For & Pay Over Meals Taxes
 1 Count Willful Attempt To Evade & Defeat Meals Taxes

SENTENCE: On the corporation and individual ordered to be jointly responsible for the payment of a criminal fine of \$40,000. The individual defendant was also placed on probation for a year and ordered to perform 200 hours of community service.

Commonwealth v. Wayne Clark, Jr.
Commonwealth v. Wayne Clark, Sr.
(Insurance Fraud Prosecution)
 (AAG Kelly)

COURT: New Bedford Superior
JUDGE: Donohue
REFERRAL: IFB
CHARGES: Clark, Jr.
 1 Count Concealing Stolen Motor Vehicle
 1 Count Concealing Motor Vehicle to Defraud Insurance

SENTENCE: (Concealing Motor Vehicle)
 5 yrs. HOC suspended for 2 yrs. (Concealing Motor Vehicle to Defraud Insurance) Joint - 2 yrs. HOC suspended for 2 years; \$7,500 restitution
 Removing VINs - on file no change of plea

CHARGES: Clark, Sr.
 1 Count Larceny Over \$250
 1 Count Larceny Over \$250

SENTENCE: Joint recommendation 18 months HOC committed/concurrent joint recommendation 18 months suspended for 2 years on and after committed time. \$12,000 restitution on one indictment; \$17,455 restitution on second indictment. Commonwealth also recommended \$4,543.76 for storage costs on one indictment/Court imposed "all other monies on terms and in amounts to be established by probation." Removing or Concealing MV to Defraud Insurer - Guilty - file.

Commonwealth v. Thomas Spencer,
(Larceny Prosecution)
(AAG Brekka)

COURT: Barnstable Superior

JUDGE: Tierney

REFERRAL: N/A

CHARGES: 18 Counts Larceny Over \$250.00

SENTENCE: 4-5 years State Prison,
suspended, one year bracelet program, Five years probation
\$5,378.76 restitution to homeowners (Fidelity Title Insurance
Company seeking losses through civil suits against Spencer
and co-defendant, James Morgan.)

ENVIRONMENTAL STRIKE FORCE

I. Making the Government Work to Protect the Environment

The Massachusetts Environmental Strike Force, a collaborative effort of the Attorney General, the Secretary of Environmental Affairs, Department of Environmental Protection, Environmental Police, and State Police, continued to pull together available governmental resources in the service of enforcing the state's environmental laws. The Strike Force also worked with the U.S. Environmental Protection Agency and U.S. Attorney's Office for the District of Massachusetts, pursuing joint state/federal environmental crimes investigations and participating in the U.S. Attorney's Clean Water Task Force.

During Fiscal Year 1996, the Strike Force unit operating out of the Criminal Bureau of the Attorney General's Office initiated criminal prosecutions against six individual and corporate defendants. The Strike Force resolved cases against twelve defendants, obtaining eight convictions and one order of pretrial probation. The remaining three defendants were acquitted. In addition, the year saw the continued use of innovative environmental crime including sentences in environmental cases by the Strike Force.

II. Criminal Case Highlights

A. Cases Initiated in Fiscal Year 1996

Com. v. H.C. Starck, Inc.

This Massachusetts tantalum manufacturer was indicted by a Middlesex County grand jury for illegal treatment of hazardous waste. An explosion which occurred in connection with the company's hazardous waste treatment practices injured two employees. A second explosion took place after firefighters responded to the scene, injuring eleven of the firefighters. The indictments, charging treatment of hazardous waste in a manner which could endanger human health, and in a manner inconsistent with DEP regulations, were the first state charges ever brought for illegal hazardous waste treatment.

U.S. v. Alan P. Stevens

Capping a joint state/federal investigation, this defendant was charged in federal court with wire fraud in connection with environmental testing and disposal of wastes. The Information alleged that the defendant purported to contract on behalf of laboratories to provide collection, testing and waste disposal services, knowing that such services would not be provided as represented and that resulting reports would be false and fraudulent. Drums of waste oil (including PCBs) collected by the defendant in connection with his scheme were allegedly dumped on unoccupied property in Peabody, Massachusetts.

Com. v. Sylvester Products Co.

This Massachusetts electroplating company was indicted by a Middlesex County grand jury for alleged illegal storage and attempted disposal of hazardous waste. The charges resulted from a tip received by the Strike Force that the company was about to cement over a concrete pit in its facility which contained hazardous plating sludge.

B. Case Dispositions in Fiscal Year 1996

Com. v. American Tissue Mills of Massachusetts, Inc.

Com. v. Northeast Waste Treatment Services, Inc.

These two companies were convicted in Worcester Superior Court on five counts of violating the Massachusetts Clean Waters Act. Northeast Waste, a subsidiary of American Tissue, operated the publicly-owned treatment plant in Templeton, Massachusetts. The two companies pled guilty to charges that they allowed pollutants to interfere with the POTW and pass through to the Otter River when they permitted a load of industrial waste to be discharged to the POTW. The pollution of the river caused an odor downstream, prompting complaints of nausea and headaches from local residents and children at a nearby school. The companies also pled guilty to failing to notify the DEP that they were accepting waste from industrial sources throughout New England in 1992. Evidence gathered by

the Strike Force investigation showed that the defendants benefitted financially by accepting the industrial wastes. The companies were sentenced to pay a fine of \$125,000.

Com. v. Krisco Corp.

This defendant, which operates a MAACO auto body shop in Somerville, Massachusetts, was convicted in Middlesex Superior Court of illegally transferring hazardous waste to an unlicensed hauler, and without a hazardous waste manifest. In pleading guilty, the company admitted that on various dates in 1992, its employees dumped partially-full cans of flammable, solvent-based paints into its trash dumpster. The garbage truck which emptied the dumpster brought its contents to a solid waste transfer station, instead of a facility which could handle hazardous wastes. The company was ordered to pay \$22,500 in fines. It paid an additional \$7,500 to the Massachusetts Environmental Trust to create educational materials on hazardous waste disposal that will be distributed to auto body shops around the state.

Com. v. Eugene McGurl

In the first prosecution of a waste broker in Massachusetts, this defendant was convicted in Worcester Superior Court of violating the Massachusetts Clean Water Act. As a broker, the defendant served as a liaison between waste generators and waste disposal facilities. He arranged for the shipment of wastewater from a Maine plastics manufacturer to the publicly-owned treatment works in Templeton, Massachusetts. The plant, which discharges to the Otter River, was unable to treat the waste. The resulting pollution of the river caused an odor downstream, prompting complaints of nausea and headaches from local residents and children at a nearby school. The defendant pled guilty to causing a nuisance. He was sentenced to pay \$28,125 in fines. He also paid \$7,500 to the Millers River Watershed Council for its use in monitoring and improving the conditions of the Otter River.

Com v. H.C. Starck, Inc.

As noted above, this tantalum manufacturing company was indicted in Middlesex Superior Court for illegally treating hazardous waste. Upon conviction, the company was ordered to pay a

record \$1.375 million in fines and penalties. \$1.25 million of this sum went to the Environmental Challenge Fund, which is used in responding to hazardous materials releases. The defendant generated sodium waste in its manufacture of tantalum, a rare metal used in high-technology components such as jet engines and nuclear reactors. The company pled guilty to charges alleging that over a three-year period, it illegally burned sodium waste in a manner which could endanger human health, safety, welfare or the environment, and in a manner inconsistent with DEP regulations. The illegal practices culminated in two explosions, injuring two employees and eleven firefighters from Newton, Massachusetts. As part of the disposition obtained by the Strike Force, the defendant also made charitable contributions totaling \$300,000 to the Massachusetts Firefighters Academy and the Shriners Burns Institute, agreed to conduct comprehensive environmental and occupational safety audits of its plant, and agreed to design and implement training courses, making them available to other manufacturers, to prevent the conditions which led to the explosions at the Starck plant.

Com. v. Sylvester Products Co.

This Marlborough plating company was convicted in Middlesex Superior Court of storing hazardous waste in a manner which could endanger human health, safety or the environment, and in a manner inconsistent with DEP regulations. The evidence showed that the company, which used various chemicals in its electroplating operations, stored plating sludge contaminated with hexavalent chromium (a known carcinogen) in a concrete pit in its facility in Marlborough for years. The company property is close to the Quabbin aqueduct and a drinking water well in Northborough. The company was sentenced to pay \$12,500 in fines.

III. Creative Sentencing

As may be seen from the above, the Strike Force continued to seek creative sentences intended to maximize the human health and environmental benefits of environmental law enforcement, by requiring companies which commit environmental crime to pay for their acts in a manner beneficial to the public. A Newton manufacturer agreed to conduct a comprehensive environmental and

occupational safety audit of its entire plant, reporting its results to the Commonwealth and other concerned local, state and federal regulatory agencies, and committing to correct all regulatory violations. This unprecedented state sentence should result in operations more protective of the local community, company employees, and the surrounding environment. Moreover, the company will design special trainings, for its own use and the use of other manufacturers, addressing the effective implementation of environmental and safety standards in the workplace, and the safe handling of ignitable and reactive materials and wastes. Another disposition will result in the production and distribution of educational materials to assist autobody shops in the safe handling of their hazardous wastes. In a third case, arising from the pollution of the Otter River, the local watershed association received moneys for use in monitoring and improving conditions of the river.

Past creative sentencing efforts also continued to bear fruit. The Work Environment Justice Fund, created as a result of the Strike Force's 1994 prosecution of a Somerville lead smelting company, granted its second annual awards to seed projects for improving workplace health and safety among low income workers. A total of \$100,000 was awarded to thirteen non-profit agencies across the state.

NARCOTICS AND SPECIAL INVESTIGATIONS DIVISION

The Narcotics and Special Investigations (NSI) Division coordinates and prosecutes complex, multi-jurisdictional criminal cases. It targets non-traditional organized criminal organizations and career criminals for prosecution. Additionally, the NSI Division investigates and prosecutes large-scale drug trafficking organizations and individuals involved in the illegal sale or possession of firearms. The Division also aids in the drafting of narcotics related legislation and the development and implementation of community education and outreach programs.

The NSI Division, through its Asset Forfeiture Unit, also initiates and pursues civil and criminal forfeiture and nuisance actions of property related to the sale, distribution and facilitation of drug related offenses. Funds recovered by the Unit are disbursed in accordance with the

Commonwealth's forfeiture laws. A percentage of the amount forfeited is used for community-based drug awareness and education programs.

OPERATION CLEAN SWEEP

During the past year, the NSI Division continued with Operation "Clean Sweep". That initiative, which targets repeat drug offenders and persons distributing drugs in the vicinity of schools and/or playgrounds, was launched during fiscal year 1994-1995. It is designed to bring additional resources to local police departments to address specific problems arising from illegal narcotics distribution and related crimes occurring in local neighborhood. The operation, first initiated in the City of Waltham during the spring of 1995, has continued to be successful.

During fiscal year 1995-1996, the NSI Division conducted two additional "Sweep" operations. The first was conducted in the City of Haverhill, where investigators assigned to the NSI Division, working with the Haverhill police and the Essex County Drug Task Force, arrested numerous individuals for drug distribution charges. The Haverhill sweep operation culminated in the arrest of 31 individuals on a variety of narcotics related offenses and the execution of 5 separate search warrants at suspected drug distribution centers. Seized as a result of that investigation was well approximately 1250 grams of highly pure cocaine, approximately 20 pounds of marijuana, and a large assortment of drug paraphernalia. In addition, NSI Division investigators seized approximately \$60,000.00 in cash and 10 vehicles. Forfeiture actions are presently pending with respect to these seizures. Civil complaints seeking forfeiture of 3 real properties where a number of the drug transactions occurred were also filed in Superior Court.

The second "Sweep" operation was conducted in Charlestown. There, undercover state police officers assigned to the NSI Division, working with the Boston police and Boston Housing Authority, made numerous narcotics purchases from individuals in Charlestown. The operation resulted in the arrest and indictment in Superior Court of 18 individuals, as well as the seizure of over 70 grams of

crack cocaine, a considerable amount of heroin, two firearms and an assortment of drug paraphernalia. Police also seized two motor vehicles under the drug forfeiture laws.

OPERATION TAKE BACK

The NSI Division also continued with its efforts in "Operation Take Back", an initiative designed to identify and target properties which are the site of repeated drug violations. Attorneys assigned to the Division's Asset Forfeiture Unit work with these property owners in an effort to eradicate the drug problems. Forfeiture actions are pursued against those properties whose owners are unwilling to take corrective measures as well as those properties which have been the site of repeated and continuous criminal violations.

Of the numerous accomplishments this year in Operation Take Back, two merit special mention. The first involved the forfeiture of a Lowell drinking establishment, the site of repeated serious criminal activity. A civil forfeiture action filed against the bar and its owners by the Division's Asset Forfeiture Unit resulted in the forfeiture of the bar to the Commonwealth. This year, ownership of the property was transferred to the City of Lowell and the property will become the site of a new Lowell police substation.

The second involved another drinking establishment located in the City of Chelsea. The bar was also the site of persistent criminal activity, including numerous sales of narcotics by the bar owner and manager to undercover state police officers assigned to the Division. The bar was previously forfeited to the Commonwealth through the efforts of the Asset Forfeiture Unit. This property is now slated to become the site of the new Chelsea District Courthouse.

LANDLORD TRAINING PROGRAMS

As a component of Operation Take Back, the Division's Asset Forfeiture Unit conducts landlord training seminars. These seminars are designed to educate landlords about their rights and responsibilities with respect to tenants who are utilizing the property as a drug distribution site. Two such trainings were conducted this fiscal year, both of which were well-attended.

The first training was conducted in Lowell this past April. The second took place the following month in Worcester. The Asset Forfeiture Unit published two manuals for use in conjunction with these trainings.

WEAPONS INITIATIVE

The NSI Division also continued its efforts to apprehend and prosecute violent criminals by targeting individuals involved in the illegal sale and possession of firearms, as well as other firearms related offenses. In addition, the Division continued to work closely with agents assigned to the Bureau of Alcohol, Tobacco and Firearms in their investigations of firearms offenses.

In one weapons case investigated and prosecuted by the Division this past fiscal year, a Worcester resident was arrested after he sold a revolver, a sawed-off shotgun and a rifle to an undercover State Trooper assigned to the Division. This individual, the first in the Commonwealth to be indicted under the new gun trafficking statute, pled guilty and received a 6-10 year prison sentence.

SIGNIFICANT PROSECUTIONS

Among the general categories of crimes the NSI Division investigated and prosecuted during fiscal year 1995-1996 were the following: armed robbery, solicitation to commit murder, armed assault with intent to murder, manslaughter, arson, child pornography, narcotics trafficking, prostitution, breaking and entering, larceny, receiving stolen property, illegal gambling, fraud, corruption and firearms offenses. As outlined below, the NSI Division initiated 111 separate criminal cases during FY 1995-1996. The Division also disposed of 80 separate criminal cases during the same time period. Some of these investigations and prosecutions are summarized below.

Ben Crest Rooming House Arson

In 1989, the Ben Crest Rooming House in Lynn caught fire, killing four people. A subsequent investigation by the Lynn Fire and Police Departments, as well as the State Fire Marshall's Office, ATF, State Police and the Essex County District Attorney's Office uncovered significant safety code violations. Specifically, the investigation revealed that the back door was chained closed, the sprinkler

system, fire alarms and smoke detectors had been disconnected and emergency ropes supplied in each bedroom were not long enough to reach the ground. One tenant using a rope to escape the fire fell two stories to his death. The case was referred to the NSI Division for review for potential prosecutions.

Following a review and additional investigation by attorneys and investigators assigned to the Division, the matter was presented to an Essex County Grand Jury which returned four indictments for involuntary manslaughter against the landlord, Leo Allard of Nahant. In May of 1996, in what is believed to be the first successful prosecution of a landlord for manslaughter since the Coconut Grove fire, Leo Allard pled guilty in Essex Superior Court to all four indictments. He was sentenced to five years probation, 500 hours of community service and a \$4,000 fine.

Jewelry Store Armed Robbers

From 1992 to 1995, Massachusetts and Rhode Island experienced a string of armed robberies of jewelry stores and jewelry salespeople. Each of the robberies was strikingly similar in the manner of execution and brazenness and it was determined that the same group was responsible for these robberies. Hundreds of thousands of dollars worth of jewelry was stolen during these robberies. At least 7 jewelry stores or jewelers were robbed by this same group.

The NSI Division entered the investigation of these robberies this past fiscal year and began coordinating and developing the available information. As a result of information developed during the investigation, State Police assigned to the Division, along with law enforcement officers from New Hampshire, Rhode Island and a number of local police departments, arrested 6 people in connection with these robberies and recovered over \$250,000.00 worth of the stolen property. Attorneys assigned to the Division began presenting evidence to grand juries in Middlesex, Norfolk, Barnstable and Essex Counties and all 6 were indicted for the robberies. By the close of the fiscal year, 5 of the 6 had either pled guilty or were convicted for their involvement in these robberies.

Prostitution Ring

In May of 1996, following a lengthy investigation by NSI Division investigators, working with the IRS and Boston, Cambridge, Quincy and Revere police, 10 men and a woman were indicted by a Suffolk County Grand Jury on charges of deriving support from the earnings of prostitutes. Four of the men were also indicted for sharing in the earnings of a minor prostitute. One of the men was also indicted for trafficking in cocaine after he sold approximately 23 grams of cocaine to an undercover police officer.

In total, five large-scale prostitution rings were targeted in this investigation. These rings, operating primarily out of residential homes in the greater Boston area, generated revenues estimated to be in excess of \$1 million a year. Allegedly employing more than 40 prostitutes, they operated under the guise of "escort services." In addition to allegedly furnishing prostitutes, some of the suspects allegedly provided quantities of controlled substances, including cocaine, to their clients. The charges against these defendants were pending at the close of the fiscal year.

Fraud Investigation

Attorneys and investigators assigned to the NSI Division, working with the United States Attorney's Office, the Federal Bureau of Investigations, the Internal Revenue Service and the U.S. Postal Service, participated in an investigation which led to a 63 count criminal indictment against Mark S. Ferber, former Massachusetts Water Resources Authority (MWRA) financial adviser, on federal fraud and corruption charges. The defendant was convicted in August, 1996 following a 12 week trial.

The same investigation also led to the filing of civil actions in state and federal court and the eventual execution of a settlement agreement with two Wall Street financial firms, Merrill Lynch and Lazard Freres. Under the settlement terms, the firms agreed to pay a total of \$24 million in fines, restitution, administrative payments and investigative costs. A significant portion of that amount was for restitution to the MWRA for financial advisory fees paid to the firms by that state agency. The

firms also agreed to effect significant changes in certain of their practices and procedures in the municipal securities industry. **Recovery Of Stolen Property**

During this past fiscal year, the NSI Division investigated a number of cases which resulted in the recovery of large amounts of stolen property. In addition to the over \$250,000.00 worth of jewelry recovered during the investigation of the jewelry store robberies, investigations conducted by the Division also led to the recovery of over \$300,000.00 worth of stolen computer equipment.

LAW ENFORCEMENT SUPPORT AND TRAINING

Attorneys and investigators assigned to the division continued their efforts to work with and provide support to other federal, state and local law enforcement agencies. These agencies included the Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, United States Customs Service, Drug Enforcement Administration, Internal Revenue Service, United States Postal Service and various state and local police department throughout New England.

Additionally, attorneys assigned to the NSI Division also sponsored a number of training programs. Among them was a training for Assistant District Attorneys handling forfeiture cases, conducted by the Division's Asset Forfeiture Unit. The Asset Forfeiture Unit also took part in a regional training for local and state law enforcement officers sponsored by the U.S. Drug Enforcement Administration.

SUMMARY OF NSI DIVISION ACTIVITIES FOR FY 1995-1996

A. Criminal Cases Initiated 111

B. Criminal Cases Disposed 80

TOTAL		PRE-TRIAL		AFTER TRIAL	
80		68		12	
CONVICTIONS	NOT GUILTY	MISTRIALS	DISMISSALS	TOTAL	
71	4	1	4	80	

C. Seizures

Cocaine 5,396.41 grams

Heroin 131.37 grams

Marijuana 212 pounds

U.S. Currency \$187,259.00

Vehicles 12

Stolen Property
Recovered \$550,000.00

D. Drug Related Civil Forfeitures

Cases Initiated 35

Vehicles Forfeited 20 (forfeiture judgments in state court)

Forfeiture Judgments \$107,758.24 (forfeiture judgments in state court)

\$ 2,044.40 (federal forfeitures)

Proceeds from Sale
of Previously
Forfeited Property \$ 90,574.53
TOTAL \$200,377.17

PUBLIC INTEGRITY DIVISION

In fiscal year 1996 the Public Integrity Division continued to investigate and prosecute public corruption and conflict of interest cases throughout the Commonwealth. The Division currently consists of six Assistant Attorneys General, several financial investigators and a team of Massachusetts State Police Officers. Given these resources, the Division has been able to successfully prosecute and convict those individuals and businesses that attempted to profit in violation of the ethical and criminal laws of the Commonwealth.

In 1996, the Public Integrity Division commenced approximately twenty-five criminal prosecutions against public officials and other individuals who violated the public trust. During the same time period, over thirty criminal prosecutions were resolved. The criminal prosecutions that were initiated this year ranged from the crime of obstruction of justice by a municipal chief of police, to conflict of interest and campaign finance violations committed by campaign aids to the former Mayor of the City of Boston.

In this past year, the Division commenced several investigations and prosecutions of individuals and political committees that violated the campaign finance laws of the Commonwealth. A special assistant to former Mayor Raymond L. Flynn was convicted of two separate instances of campaign finance violations. The assistant was found guilty of maintaining thousands of dollars in unreported cash contributions in his office at City Hall. These unreported cash funds were used to pay many unauthorized expenses in violation of the campaign finance laws of the Commonwealth. In addition, the assistant authorized and participated in the expenditure of approximately \$5,000 in campaign funds for the Mayor's family vacation in Orlando, Florida. Furthermore, the special assistant was convicted of accepting over \$50,000 in gratuities, received by him because of the official position he maintained with the City of Boston. These gratuities were provided by those individuals and businesses that had a contractual relationship with the City of Boston.

Former Mayor Raymond L. Flynn's campaign finance director was also convicted of embezzling several hundred thousand dollars from the Flynn Committee, and was sentenced to two years in the House of Correction. Furthermore, the Raymond L. Flynn Committee entered into a civil disposition agreement with the Office of the Attorney General and Office of Campaign and Political Finance in which the former Mayor acknowledged his personal use of campaign funds, and his failure to properly maintain adequate records. The former mayor agreed to repay his Committee \$12,500 in funds used for his family's personal expenses. The Flynn Committee also agreed to forfeit \$10,000 to the Commonwealth.

The Public Integrity Division continued to successfully work with state and federal law enforcement officials. The above prosecution was obtained as a result of the joint efforts of the Public Integrity Division working in conjunction with the Public Corruption and Special Prosecutions Unit of the United States Attorney's Office and the Internal Revenue Service.

The former Mayor of Fall River also entered into a disposition agreement in which he forfeited approximately \$25,000 to the citizens of Fall River and the Commonwealth. In addition, the former Mayor acknowledged his committee's role in maintaining unreported cash contributions. Moreover, The former Mayor admitted to using some of the unreported cash to pay off debts of a former political opponent in exchange for that opponent's political support.

The Division continued to prosecute incidents of corruption within the field of law enforcement. In October, 1995, the Division obtained the conviction of the Chief of Police of the Town of Oxford on obstruction of justice charges. The defendant in that case was found guilty of threatening and attempting to intimidate a witness that was cooperating with the Attorney General's Office. The defendant was eventually sentenced to ninety days in jail.

The Division also prosecuted numerous state or municipal employees that stole Commonwealth funds. In one instance, the tax collector for the town of Westminster embezzled over \$20,000 and received a six month jail term.

The Division continued to prosecute private businesses that defrauded the Commonwealth out of hundreds of thousands of dollars. One business owner, who ran a non- profit homeless shelter in Boston for single mothers and their children, was convicted of larceny and procurement fraud perpetrated upon the Department of Public Welfare. The Commonwealth convicted the shelter operator of diverting over \$175,000 of DPW funds to cover personal expenses he and his staff incurred. These personal expenses included vacations in exotic places, dinners at expensive restaurants and over 40 massages at a local health spa. The business owner was eventually sentenced to two years in jail.

Working with another state agency, the Division also brought criminal charges against a former Boston police officer turned criminal defense investigator. The investigator allegedly defrauded the Committee for Public Counsel Services of over \$100,000. The investigator allegedly submitted phony billings for investigative services he never performed on behalf of indigent criminal defendants. In addition, the investigator also allegedly defrauded a local pension board in collecting his disability pension in violation of laws that prohibit such conduct.

The Division successfully utilized other resources of the Attorney General's Office in expanding its capacity to prosecute corruption cases throughout the Commonwealth. Working in conjunction with the Western Massachusetts Office of the Attorney Generals Office in Springfield, the Division was able to prosecute two complex schemes to defraud Commonwealth funds. The first scheme involved four Holyoke rental property managers that allegedly stole \$39,000 in heating assistance benefits intended for the poor and elderly. The property managers employed a scheme in which they applied for and received heating assistance benefits to which they were not entitled.

Another scheme uncovered in Springfield involved a former state employee who participated in a scheme to generate thousands of dollars in unemployment checks to former recipients that no longer qualified for benefits. Once the checks were generated, the former employee intercepted and cashed them. Both of the Springfield cases are currently pending in Superior Court.

The Public Integrity Division also works closely with other divisions of the Criminal Bureau. This past year, the Public Integrity Division combined resources with the Tax Prosecution Unit of the Economic Crimes Division to successfully prosecute and convict a number of public officials and business entities for violations of the criminal tax laws of the Commonwealth.

The Division continues to coordinate the Attorney General's Public Integrity Advisory Group, which brings together representatives from the various executive branches of state government to discuss joint efforts to detect fraud, waste and abuse by government employees. Many of the prosecutions and convictions obtained by the Public Integrity Division originated from referrals by members of the Advisory Group.

The Division's 1996 cases are summarized below.

Public Charges and Indictments:

9/95

ALICIA PORCHER

(W/MA)

5 counts Forgery

1 count Larceny

5 counts False Submission to DET

9/95

KELVIN GRANT

(W/MA)

7 counts Forgery

1 count Larceny

8 counts False Submission to DET

9/95

CHARLES WILLIAMS

(W/MA)

1 count Larceny over \$250

9/95

McKINLEY QUARLES

(W/MA)

1 count Larceny over \$250

10/95

MARIO SPENCER

1 count of Forgery
1 count of Uttering
2 counts of Embezzlement by a Town Officer
2 counts of Larceny
2 counts of Filing False Reports

10/95

JANET SPEARS

(W/MA)

3 counts of Larceny
2 counts of Conspiracy
1 count of Receiving

10/95

MICHAEL SPEARS

(W/MA)

3 counts of Larceny
2 counts of Conspiracy
1 count of Receiving

10/95

ERICK SPEARS

(W/MA)

3 counts of Larceny
2 counts of Conspiracy
1 count of Receiving

10/95

PERCY LEE GRANT

(W/MA)

3 counts of Larceny
2 counts of Conspiracy
1 count of Receiving

11/95

PAUL DEDIAN

1 count of Larceny over \$250
1 count of Embezzlement by Town Official
1 count of False Written Reports

12/95

JAMES RIBERO

1 count Larceny under \$250

12/95

GEORGE THIBODEAU

1 count Larceny over \$250

8 counts False Representation

4 counts Failure to File Tax Returns

12/95

BETTY WING

1 count Larceny over \$250

3 counts False Written Reports

12/95

CATHERINE ROGERS

1 charge Larceny over \$250

5 charges False Reports to DPW

2/96

DOUGLAS deRUSHA

2 counts of Campaign Finance Violations

1 count of Larceny over \$250

1 count of Larceny

2/96

JOSEPH FISHER

5 counts Conflict of Interest

2 counts Campaign Finance Violations

4/96

JOYCE CAMIRE

Larceny over \$250

Forgery

Uttering

5/96

JOSEPH J. BUTLER

Procurement Fraud

False Claims

False Entry in Corporate Record

Conspiracy

5/96

JACQUELYN MENNITTO

Procurement Fraud

False Claims

False Entry in Corporate Record

Conspiracy

5/96

BRIAN ARTHUR

Larceny over \$250

5/96

CLAUDE daCOSTA

Larceny over \$250

False Claims

False Written Reports

5/96

NORMA ORTEGA-CANARY

Larceny over \$250

Conspiracy

5/96

VICTOR MARTINEZ

1 count Larceny over \$250

5 counts Forgery

5/96

LUIS TORIBIO

1 count Larceny over \$250

1 count Conspiracy

5 counts Forgery

6/96

JAMES MILLS

3 counts Larceny over \$250

2 counts False Claims

2 counts Procurement Fraud

2 counts Larceny by False Pretenses

3 counts Perjury

1 count False Tax Returns

4 counts Failure to File Tax Returns

3 counts Pension Fraud

Dispositions:

9/95

JOHN F. JULIAN

Defendant pled guilty

Received 4 yrs. probation

\$13,679 restitution

10/95

JAMES JUNE

Defendant pled guilty

Received 2 ½-3 yrs. state prison

1 yr. to serve

10/95

JOSEPH P. BOGIGIAN

Defendant pled guilty

Received 3-5 yrs. State Prison sentence, suspended

Received 3 yrs. probation

\$6,400 restitution

10/95

JAMES TRIPLETT

Defendant found guilty of obstruction of justice

Received 1 year House of Correction, 90 days to serve

Defendant found not guilty on conflict of interest charges

Jury unable to decide false report charges

11/95

GROUP BENEFITS STRATEGIES

Defendant pled guilty

Fined \$20,000

11/95

PAUL TINSLEY

Defendant pled guilty

Fined \$10,000

12/95

BRENDA BARNEY

Defendant pled guilty

Received suspended sentence

\$17,000 restitution

12/95

PETER COOK

Campaign finance charges dismissed

Commonwealth's appeal pending

12/95

SKE, INC

Default judgement entered by Superior Court

12/95

DERECK WILLIAMS

Defendant pled guilty

Received 2 - 3 years state prison

3/96

MARIO SPENCER

Defendant pled guilty

Received 1 yr. House of Correction

6 months to serve

\$17,000 restitution

3/96

RAYMOND FLYNN COMMITTEE

Civil disposition agreement

Candidate acknowledged responsibility

\$10,000 forfeiture of committee funds

\$12,500 personal reimbursement to committee

5/96

BRIAN ARTHUR

Defendant pled guilty

Received suspended sentence

\$5,000 restitution

100 hrs. community service

5/96

LUIS A. TORIBIO

Defendant pled guilty

Sentencing pending

5/96

VICTOR MARTINES

Defendant pled guilty

Sentencing pending

5/96

JOSEPH FISHER

Defendant pled guilty

Received 12 months House of Correction

- 12 months suspended

\$10,000 fine

6/96

PAUL F. DEDEIAN

Defendant pled guilty

Received 2 yrs. House of Correction

6 months to serve

\$22,000 restitution

6/96

JOHN R. MITCHELL

Civil disposition agreement

Candidate acknowledged responsibility

\$17,500 fine

\$7,500 restitution

6/96

MARILYN M. RODERICK

Civil disposition agreement

Candidate acknowledged responsibility

\$5,000 fine

6/96

JOHN E. CLECKLEY

Defendant found guilty

Sentenced to two years House of Correction

Restitution to be determined

6/96

MICHAEL PISCIONE

Defendant found not guilty

6/96

MANUEL LOPES

Defendant found not guilty

6/96

BRIAN ARTHUR

Defendant pled guilty

Suspended sentence

\$5,000 restitution

100 hours community service

6/96

CLAUDE daCOSTA

Defendant pled guilty

Suspended sentence

\$16,000 restitution

\$10,000 fine

VICTIM/WITNESS PROGRAM

The goals of the Victim/Witness Assistance Program of the Attorney General's Criminal Bureau are: (1) to provide crisis assessment and intervention to crime victims and witnesses to facilitate their emotional, psychological, physical and financial recovery from victimization; (2) to reduce the level of secondary victimization associated with victims' and witnesses' involvement in the criminal justice system and other systems; and (3) to aid in the prosecution of criminal cases by ensuring that crime victims and witnesses are provided with the rights and services mandated by the Victim Rights Law (M.G.L. c. 258B).

During Fiscal Year 96 the program continued its momentum to focus on victim/witness needs. Victim advocacy and witness management services were provided by victim/witness advocate Kathy Morrissey on 36 cases covering 9 counties across the Commonwealth. The nature of victimization in cases included arson, rape, indecent assault and battery, domestic assault and battery, assault and battery on a child, patient abuse, insurance fraud, financial exploitation, armed robbery, armed assault in a dwelling, kidnaping, assault with a deadly weapon and solicitation to commit murder. Due to the high volume of witnesses, there were extraordinary demands for witness management, scheduling, and coordination for complex cases going to trial. The victim/witness advocate also provided consultation by screening 28 additional cases arising from duty calls, intakes and correspondence. The nature of complaints included homicide, incest, sexual assault, termination of parental rights, visitation and custody issues, parental neglect, violation of restraining orders, harassing telephone calls, sexual harassment and intimidation of witnesses.

The Internship Program continued to expand in Fiscal Year 96. The victim/witness advocate is responsible for the supervision of the victim/witness advocate intern. The Criminal Bureau's second victim/witness advocate intern successfully completed a year-long, six credit internship in May, 1996 and graduated with associate degrees in human service and criminal justice.

The victim/witness advocate is also responsible for ongoing training and development relating to victim/witness issues. On August 7, 1995, a Criminal Bureau Victim Rights training was presented in anticipation of the Victim Rights Law which became effective on August 13, 1995. In October, 1995, the victim/witness advocate wrote an article for the Law Enforcement Newsletter outlining the Victim Rights Law of 1995. In the Spring of 1996, the victim/witness advocate presented two office-wide brown bag lunch sessions on domestic violence and also assisted as a standby crisis counselor at the Commonwealth's Annual Victim Rights Conference.

URBAN VIOLENCE STRIKE FORCE

The Urban Violence Strike Force was organized in the spring of 1991 as part of Attorney General Scott Harshbarger's overall commitment to improving the quality of life for residents of the Commonwealth's urban communities. Recognizing that there was an immediate need for additional resources to combat the increased level of violent crime that was blighting many of our urban neighborhoods, Attorney General Harshbarger assembled a team of experienced prosecutors and placed them at the disposal of the District Attorneys for both Suffolk and Essex counties. Over the course of the next two years, these specially assigned Assistant Attorneys General worked with the local police and district attorneys to successfully prosecute well over a hundred cases in both Suffolk and Essex Superior Courts.

Based on the positive results achieved in both Suffolk and Essex counties, the Urban Violence Strike Force District Court Rotation Program was started. Assistant Attorneys General were assigned to the strike force on a rotating basis, and the strike force's efforts were expanded to include the prosecution of cases in a number of the Commonwealth's busiest district courts.

In February of 1993, Attorney General Harshbarger continued his strong commitment to combating urban violence by establishing the Safe Neighborhood Initiative, an innovative prosecution and neighborhood revitalization effort targeting the Fields Corner, Bowdoin and Geneva Avenue sections of Dorchester.

Safe Neighborhood Initiative

The Safe Neighborhood Initiative (SNI) is the result of a four-year partnership between the offices of Attorney General Scott Harshbarger and Suffolk County District Attorney Ralph Martin. In February of 1991, Attorney General Harshbarger assigned three full-time Assistant Attorneys General to work with District Attorney Martin's office to prosecute major violent felonies and gang-related offenses. While this contribution to existing prosecution efforts was helpful, Attorney General

Harshbarger and District Attorney Martin agreed that the problems facing our communities demanded a comprehensive, multi-faceted approach to effectively deal with the crime and the fear of crime which threaten the quality of life in Boston's neighborhoods. On February 22, 1993, the Dorchester Safe Neighborhood Initiative (SNI) was formed as a partnership among community residents and organizations, the Office of the Attorney General, the Suffolk County District Attorney's Office, the Boston Police Department and the Mayor's Office of the City of Boston.

Today, the Dorchester SNI has established its viability as a community-driven model for public safety and neighborhood revitalization. Younger projects throughout Massachusetts are demonstrating that the SNI can be replicated successfully in communities with very different needs and resources. By coordinating strategies among SNI law enforcement agencies, state and local government offices and community organizations, the SNI is an efficient tool to solving a variety of neighborhood problems.

The Office of the Attorney General has been at the forefront of the Dorchester model SNI and unique replication projects in the Grove Hall area of Roxbury, Chelsea, Brockton and Lynn. To date, nearly a dozen Assistant Attorneys General have been designated to SNI Community Prosecution Teams in district and superior courts. The SNI Community Prosecutors continue to work with police, probation, neighborhood crime watches and community groups to ensure the attention of criminal justice is not only directed to media headlines such as gang or drug-related crimes, but also to the quality of life crimes which tear at the social fabric of many communities. Special Office of the Attorney General programs are leveraged to address community priorities, such as the Abandoned Properties Project which seeks to rectify building code violations. Furthermore, the Office of the Attorney General provides grants to a number of SNI community organizations which provide small business education for local merchants, prevention, intervention and treatment programs for youth and their families, and recreational and educational activities for all neighborhood residents.

These investments generated several important events during fiscal year 1996. In September, the Attorney General hosted a conference to support state-wide interest in replicating the SNI which

was attended by approximately 400 people from cities throughout the Commonwealth. The winter months were occupied with technical assistance and planning efforts to assist the Plymouth County District Attorney's Office in designing the Brockton SNI, which took off with enthusiastic community support in February. In March, the Department of Justice awarded the Grove Hall SNI with official Weed and Seed site recognition. In April, Attorney General Harshbarger, District Attorney Martin, Boston Police Commissioner Paul Evans and Mayor Thomas Menino attended the monthly Dorchester SNI community advisory council meeting and then, in May, the principals assumed active roles in the Dorchester SNI Domestic Violence Symposium, an event which attracted 70 area teachers, health care workers, clergy and other local professionals. June witnessed the formal inauguration of the Chelsea SNI, building on the momentum of an extremely successful Zero Tolerance Weekend in the target area. Throughout the later months of fiscal year 1996, supervisory staff from the Office of the Attorney General met with Essex County District Attorney Kevin Burke and other key offices in Lynn to plan a Lynn SNI for fiscal year 1997 implementation.

Toward the close of fiscal year 1996, the Safe Neighborhood Initiative made financial strides for fiscal year 1997. The Executive Office of Public Safety approved for the Dorchester SNI level funding at \$341,314.00 as well as a new \$30,000.00 grant to support a community-court liaison for the Grove Hall SNI. The Department of Justice officially recognized the Grove Hall SNI as a Weed and Seed site, positioning the initiative to apply for \$125,000-\$225,000 in federal support. Approximately \$375,000 in state funds were approved for SNI personnel and expenses in the Office of the Attorney General budget.

The Criminal Bureau members assigned to the Safe Neighborhood Initiative are Deputy Chief Susan Hicks Spurlock, Assistant Attorneys General Marcia Jackson, John Benzan, Neil Tassel, Shelley Richmond, Glenn MacKinlay, Brian E. Burke, Audrey Huang, Patricia Preziosa and SNI Project Administrator, Sara Trenary.

The following sections of the SNI report will provide prosecution statistics and significant community initiatives in Dorchester, Grove Hall, Chelsea and Brockton SNIs during fiscal year 1996. It is important to note that SNI projects differ in age and therefore sometimes reflect data for different spans of time. Furthermore, the SNI prosecutorial statistics in this report do not reflect disposition outcomes other than probation sentences and sentences to the House of Correction or State Prison. It is standard in busy urban courts, such as those in the SNI areas, for a high number of cases to be disposed as dismissal upon payment of court fees, guilty with a fine, continuance without a finding, etc.

The Dorchester SNI

The principal offices of the Dorchester SNI have committed significant resources to the model SNI project, including staff and financial support from the offices of Attorney General Scott Harshbarger, Suffolk County District Attorney Ralph Martin, Boston Police Commissioner Paul Evans and Mayor of the City of Boston, Thomas Menino. Throughout fiscal year 1996, the Dorchester SNI Advisory Council met 1-2 times each month, engaging staff from the principal offices with 30-40 community residents and organization representatives. The meetings provided a regular opportunity for the Dorchester SNI community to bring a number of priorities to the forefront of the SNI agenda, including domestic violence and prevention and intervention for youth.

A significant challenge to the Dorchester SNI community this fiscal year was a spate of youth violence in the Bowdoin Street area. The problem inspired the Dorchester SNI law enforcement agencies and community groups to design and implement appropriate responses. The SNI Advisory Council prepared a violence prevention-oriented strategy; SNI prosecutors attended meetings with Boston Police, State Police and the U.S. Attorney's Office to discuss this recent increase in violence and to plan an undercover drug operation in the Bowdoin Street area.

One result of coordination and collaboration among SNI law enforcement agencies is evident in a case prosecuted during fiscal year 1996. In this case, the defendant is a reputed member of a group that is an off-shoot of a gang called the Vamp Hill Kings. These two groups have been involved in recent violent activities in the Bowdoin Street area due to the return of gang members who have been incarcerated. The defendant was arrested for possession of a firearm, and after the review of the defendant's record and discussion with the Suffolk County District Attorney's Office it was agreed that if indicted under federal law as a felon in possession of a firearm the defendant could stand to face a greater period of incarceration than what he might receive following a state conviction. Discussions were held with representatives of the U.S. Attorney's office who agreed to accept this case for federal

prosecution. Since the defendant was being held on a high cash bail prosecutors obtained a state indictment to guarantee that the defendant would remain held on bail while the federal indictments were being sought. Currently, the defendant is being held in the Suffolk County Jail, federal indictments have been returned and an arraignment in U.S. District Court is expected soon.

The potential counter-threat posed to criminals by coordinated law enforcement has reached almost legendary status in the Dorchester SNI area. During fiscal year 1996, an interagency group of SNI-area streetworkers and state and local police and prosecutors spoke to a group of gang-associated youth about the case of Freddy Cardoso, a serious criminal in the area who, through the use of federal statutes, received 20 years in federal prison for possessing a single bullet. Several months have passed since these youth heard the story of Cardoso's case, and these youth remain conspicuously absent from criminal activity.

The introduction to this report spotlights several of the community accomplishments of the Dorchester SNI such as the Domestic Violence Symposium and the \$341,314 grant received from the Executive Office of Public Safety. In another instance of success, MBTA Police worked with SNI prosecutors and the Advisory Council to see that two of the three pay phones that had recently been installed at the Fields Corner Station and that, according to residents, had attracted drug-related activity, were moved to inside the fenced area of the station so the phones were only accessible to MBTA riders. The third phone was left outside the fenced area and has been replaced with a NYNEX "Smart Phone" which is limited to 911 access during off-peak travel hours. This type of efficient and creative problem-solving is emblematic of the SNI partnership.

**Dorchester SNI Prosecution Statistics
July 1, 1995 -June 30, 1996**

Dorchester District Court		Superior Court	
Total New Cases Screened	1126	Cases Disposed	43
Cases Disposed	597	Defendants Sentenced	
Defendants Sentenced		to HC/Prison	31
to House of Correction	60	Probation	3*
Probation	77*	Referred to US Attorney	1

*Note: Probation statistics were required after January, 1996. Therefore, Dorchester SNI probation statistics only reflect two out of four quarters of data.

The Grove Hall SNI

Fiscal year 1996 was a year of important recovery and growth for the Grove Hall SNI. After the tragic murder of Assistant Attorney General Paul McLaughlin in September, the Grove Hall SNI had to recover from the loss of the SNI Lead Prosecutor and a dear friend to many. AAG McLaughlin's spirit perseveres in the tenacity of the Grove Hall SNI. The Grove Hall SNI principal offices-- Attorney General Scott Harshbarger, District Attorney Ralph Martin, Boston Police Commissioner Paul Evans, Mayor of the City of Boston, Thomas Menino and U.S. Attorney Donald Stern-- and Grove Hall community members met 1-3 times a month since the project's inception in March of 1995. Throughout fiscal year 1996, the group identified as priorities quality of life issues such as prostitution, motor vehicle violations, domestic violence, alcohol abuse by minors and crimes against the elderly.

The Grove Hall SNI's heavy focus on quality of life issues was complimented by targeted and coordinated prosecution efforts. In one significant case, the defendant was arrested and charged with

unlawful possession of a firearm, possession of crack cocaine, intent to distribute in a school zone, failing to stop for a police officer, and assault and battery on a public servant. The defendant already had a 2 1/2 year stay of execution pending; the stay was revoked and the defendant was sentenced to 2 1/2 years committed to the House of Correction. As an SNI partner, the U.S. Attorney's Office consulted on the defendant's record and indicted him on the firearm charge as a career criminal, for which the defendant faces a mandatory sentence of 15 years to life in federal prison. The GHSNI Prosecution Team also intends to proceed with the drug charges in district court and to seek the maximum penalty. Similar to the example illustrated in the Dorchester SNI, this SNI case demonstrates how coordinated prosecution efforts can yield powerful sentences.

This year, the Grove Hall SNI District and Superior Court Prosecution teams also worked closely with the Area B-2 Boston Police Department to investigate possible sights for drug sweeps and a variety of other police operations, such as Operation Squeeze. Operation Squeeze, an ongoing effort by the Boston Police Department to prosecute "Johns" soliciting prostitutes, was undertaken twice in May. In the early May sweep, there were 16 arrests. Of these arrests, 13 defendants were sentenced to significant probation time, 100 hours of community service, and were required to take part in an AIDS education awareness program. The remaining three defendants from that sweep appeared in court in late July. The sweep in late May netted 12 defendants.

The Grove Hall SNI Prosecution team was also active this year in groups such as the Roxbury Domestic Violence Round table discussion group and the Community-Based Juvenile Justice Program at the Jeremiah Burke High School. The extensive efforts of the Grove Hall SNI Prosecution Team will soon receive critical support: in fiscal year 1996, the Program Division of the Executive Office of Public Safety approved an application for \$30,000.00 to hire a Court/Community Liaison. The liaison will work within the Grove Hall neighborhoods of Roxbury to coordinate the community initiatives component of the SNI and to act as a liaison with the Roxbury District Court.

**Grove Hall SNI Prosecution Statistics
January 2, 1995- June 30, 1996**

Roxbury District Court		Superior Court	
Total New Cases Screened	327	Cases Disposed	3
Cases Prosecuted	291	Defendants Sentenced to HC/Prison	3
Cases Disposed	154	Probation	0
Defendants Sentenced to House of Correction	63	Superior Court Case Referred to US Attorney	1
Probation	76		

The Chelsea SNI

The Chelsea SNI was originally founded in September of 1995 by the principal offices of Attorney General Scott Harshbarger, Suffolk County District Attorney Ralph Martin, Chelsea Police Chief Edward Flynn. Chelsea City Manager Guy Santagate joined the SNI soon after, and by May of 1996 community prosecution had commenced and community organizations had joined the Chelsea SNI Advisory Council, which meets monthly. The Chelsea SNI aims primarily to reduce crime, especially drug dealing and prostitution, in the targeted area through coordinated police and prosecution efforts and neighborhood involvement in these efforts.

The Chelsea SNI worked assiduously during fiscal year 1996 to bring law enforcement to bear on the quality of life issues which are often left unaddressed. For example, at the SNI Advisory Council meeting in April, the community rallied to express concern over the increasing damage caused by a troublesome person in the area. The testimony of the community persuaded police and other SNI law enforcement officials to keep the individual under close watch. Within a month, the individual was arrested on a default warrant and pled guilty to several charges which effectively removed him from the area. This case presents a simple but critical force which drives the SNI: community-defined priorities.

Other significant accomplishments of the Chelsea SNI this fiscal year demonstrate the importance of quality of life issues, community input and their relationship to public safety. In one instance, the SNI Advisory Council applied pressure to the Store 24 to close during the hours of 12:00 a.m.-5:00 a.m. The store has posed chronic problems to police as it has been a magnet for criminal activity, particularly disorderly conduct by youth in the early morning hours. The Advisory Council decided to submit a letter to the Licensing Board from an SNI Prosecutor to request the closure, which has since been effected. Similar to the Store 24 case, the Riley's Roast Beef was home to criminal

activity, especially drug sales. The SNI Advisory Council has successfully advocated for the restriction of drive-through hours and the removal of outside tables and benches in order to diffuse drug sales.

Several community members were present at the June inauguration celebration for the Chelsea SNI, which rode on the momentum of the highly publicized May 10-12 Zero Tolerance weekend. The Zero Tolerance targeted johns, public drinking and traffic offenses and netted a total of 64 arrests.

**Chelsea SNI Prosecution Statistics
May 10, 1995 - June 30, 1996**

Chelsea District Court		Superior Court	
Total New Cases Screened	226	Cases Prosecuted	3
Cases Prosecuted	226	Cases Disposed	0
Cases Disposed	85	Defendants Sentenced	
Defendants Sentenced		to HC/Prison	0
to House of Correction	8	Probation	0
Probation	6		

The Brockton SNI

The principal offices of the Brockton SNI-- Attorney General Scott Harshbarger, Plymouth County District Attorney Michael Sullivan, Brockton Police Chief Paul Studenski and Brockton Mayor John Yunits-- designed and implemented an inspiring replication of the Dorchester model. On February 20, 1996 the Brockton SNI held the first community meeting and continues to meet monthly. Throughout the early months of 1996, the Brockton SNI defined their priorities to include the abandoned buildings and landlord accountability, drug dealing, youth/gang violence, and the need for programs for teens.

The coordinated law enforcement efforts of the Brockton SNI gleaned highly publicized successes this fiscal year, such as a drug raid which lead to the dismantling of a sophisticated crack cocaine ring in the neighborhood, including the arrest of three suspected drug kingpins and the seizure of over 300 grams of cocaine. Drug sweeps and zero tolerance exercises are a strong statement by law enforcement agencies to criminals that violative behavior will be addressed, if appropriate, with arrest and enhanced prosecution. The role of the Brockton SNI in such statements is critical to a city which boasts that 2/3 of its populace are members of crime watches.

The Brockton SNI was extremely successful in mobilizing community support and city agency participation in neighborhood revitalization efforts such as the Adopt-a-Lot program, which generates sponsors to support the beautification of vacant lots and the Abandoned Properties project, a collaborative project between the Office of the Attorney General, the District Attorney's Office, city offices and the community to ensure that building code violations are addressed.

The Brockton SNI will also receive coordination support due to an SNI Prosecutor who submitted a successful grant proposal to Christy's Convenience Store (headquartered in Brockton). During this fiscal year, Christy's awarded the Brockton SNI \$1,000.00 a month for 12 months as partial

payment for the salary of a Court/Community Coordinator. The Office of the Attorney General will supplement the grant from Christy's to make the position a reality for fiscal year 1997.

**Brockton SNI Prosecution Statistics
February 1, 1995- June 30, 1996**

Brockton District Court

Total New Cases Screened	151
Cases Prosecuted	151
Cases Disposed	55
Defendants Sentenced	
to House of Correction	17
Probation	5

Superior Court

Cases Disposed	1
Defendants Sentenced to	
HC/Prison	1
Probation	1

District Court Rotation Program

The District Court Rotation Program began in October, 1991 as an expansion of the Urban Violence Strike Force. The program involves the six month deployment of specially trained Assistant Attorneys General working on loan to the District Attorney's office in Roxbury, Lawrence and Brockton, three of the busiest district courts in the Commonwealth. The program has provided a significant contribution to existing prosecution efforts and has been extremely helpful to the Suffolk, Plymouth and Essex District Attorneys Offices. Since its inception, fifty-four assistant attorneys general have participated in the program.

In fiscal year 1996, the Assistant Attorneys General assigned to the rotation program prosecuted a wide range of cases generally found within a district court caseload: larceny, operating under the influence of liquor, both simple and more complicated drug cases, property crimes (malicious destruction of property, breaking and entering, larceny, motor vehicle), gun cases and a great number of assault-related crimes, many of which involved a weapon.

Assistant Attorney General participants in the District Court Rotation Program for fiscal year 1996 were Glen Kaplan, Djuna Perkins, Joshua Krell, Audrey Huang, Katherine Hatch and Selena Samm.

FAMILY AND COMMUNITY CRIMES BUREAU

The Family and Community Crimes Bureau is primarily responsible for policy and program development, training and legislation in several subject areas: family violence, (including child abuse, elder abuse, and partner violence) children and youth, and victims of crime. In addition, claims for compensation filed by victims of violent crime are reviewed and approved through the Bureau's Victim Compensation and Assistance Division.

THE ELDERLY

The protection of elders continued to be a priority for the Office of the Attorney General. Consequently, a focus on elder abuse and neglect, consumer fraud and financial exploitation remained a priority for the Family and Community Crimes Bureau, through the work of the Elderly Protection Project, working with the Public Protection Bureau and other Divisions within the office.

In FY '96, the Project continued to provide high quality and comprehensive training to police officers and recruits across the Commonwealth. Development and presentation of day-long seminars and workshops, and dissemination of training manuals, provided training on a variety of elder issues to police at all levels: introductory training for new police recruits, advanced training for veteran officers, and training on community outreach and using elders as volunteers for police managers. Overall, the training reached approximately 288 police recruits, and over 500 police officers at varying levels. In addition, the Project developed a separate training program for law enforcement officers on effectively dealing with persons with Alzheimer's Disease. This program, coordinated in conjunction with the Alzheimer's Association of Eastern Massachusetts, included a roll-call training videotape, police guidebook and laminated "Cruiser Call Sheet" for handy access by patrolling officers. The Project staff also participated in "first responder" trainings on available local resources for the care of Alzheimer's patients, entitled *Allies for a Safe Return*.

The Project also provided direct education to elders on consumer issues, home safety and security, and fraud, in the form of day-long seminars entitled, *Consumer University*. These seminars were held at three different sites across the Commonwealth, and reached over 820 elders, who each received a 73 page "student manual" for future reference.

The Bureau's participation in the Massachusetts Bank Reporting Project involved development of training manuals and presentation of three-hour training programs for bank managers and employees on their proper roles in detecting, assessing and preventing elder financial exploitation. These programs were presented to over 450 bank managers and security officials, in conjunction with the Executive Office of Elder Affairs and the Massachusetts Bankers Association. The banking industry has since ordered 160,000 copies of a pamphlet prepared by Bureau staff on elder financial exploitation, entitled *It's Your Future: Protect Your Savings*.

FAMILY VIOLENCE

Effective intervention and prevention of the ongoing problem of family violence and abuse continues to be a major focus of the work of the Family and Community Crimes Bureau. The Attorney General has taken advantage of the opportunity to expand this focus nationwide through his role as a member of the Department of Justice's National Advisory Council on Violence Against Women and convenor of its Law Enforcement Working Group.

Updated and comprehensive training for law enforcement officials remains a vital part of any strategy to combat, and ultimately prevent, family violence. The Family and Community Crimes Bureau remained at the forefront of such efforts through presentation of the Attorney General's Fifth Annual Domestic Violence Police Training in FY '96. This training provided over 300 police officers with updates on legal developments and information on intervention and prevention strategies focusing on children who witness family violence, domestic violence against elders and teen dating violence. This training was replicated, in conjunction with the offices of the Berkshire, Hampden and

Northwestern District Attorneys, for police in western Massachusetts. Additional law enforcement training efforts included publication of a domestic violence update section of the Attorney General's Law Enforcement Newsletter, as well as participation in the Massachusetts State Police Domestic Violence Training Program.

Training for prosecutors on domestic violence and sexual assault will be effectively addressed through the creation of a Prosecutor's Manual on Domestic Violence and Sexual Assault, which the Family and Community Crimes Bureau has obtained a federal grant to produce, in collaboration with the Massachusetts District Attorneys' Association, and the eleven district attorneys offices across the Commonwealth.

Recognizing that the problem of family violence is in large respect a public health problem, requiring a community-wide response, the Bureau's efforts have extended to other segments of the community. In FY '96, these efforts included the production of a video for health care professional entitled *Diagnosis: Domestic Violence* and collaboration with a Greater Boston interfaith clergy group in an effort to produce a training manual for clergy on effectively addressing domestic violence issues in their congregations. The effect of domestic violence on the workplace has also been a focus of the Bureau's work. Staff participated in several training sessions for private employees, presented three in-house training sessions on domestic violence for office staff, and urged use of the Attorney General's office policy as a model for the commonwealth and private employers to adopt as part of a comprehensive effort to address the problem of family violence within the workplace.

The Bureau has continued to draft and file legislation to further improve the criminal justice system's response to family violence. In FY '96, legislation filed by the Attorney General, and now law, will effectively implement federal legislation by creating a mechanism for local police and prosecutors to enforce protection orders issued outside of Massachusetts. The legislation also will expand police arrest powers where firearms are present in domestic violence situations, facilitate the

ability of persons court access to persons with disabilities to obtain protective orders and expand the scope of admissible evidence in cases of domestic abuse committed against a spouse.

CHILDREN/YOUTH

In the area of juvenile justice, the Family and Community Crimes Bureau drafted and filed legislation directed at improving the administration of justice for serious youthful offenders. This legislation sought to reverse the then-current practice by mandating that a juvenile's trial be conducted first, before any other proceedings to determine whether disposition as a juvenile or as an adult was appropriate. The (*trial de novo*) bill also sought to eliminate the practice of allowing juveniles two separate trials. A modified version of this legislation was passed by the legislature. Bureau staff also participated in planning and presenting a 5-day certification training for juvenile police officers, in conjunction with the Massachusetts Juvenile Police Officers' Association, covering all aspects of law enforcement procedures for dealing with juvenile offenders. The Bureau also continued to work with the Child Welfare League of Massachusetts, in a continued effort to achieve full implementation of a statewide Juvenile Court.

The Bureau also continued its efforts to work with school administrators and police toward creating a safe school environment for students. The Attorney General filed a Safe Schools Legislative Package, drafted by the Bureau, which included provisions for gun-free school zones and increased cooperation and communication between schools and law enforcement. The Bureau also instituted a Safe Schools Newsletter for school administrators, and law enforcement officer and held its annual Safe Schools Conference this year entitled, *Civil Rights in Our Schools: Building a Safe Community*. Bureau staff continued to work with campus law enforcement authorities to address student safety issues, including the reporting of sexual assaults on campus.

VICTIMS

Bureau staff also drafted and filed a comprehensive bill to protect the privacy of crime victims' confidential counseling communications; filed *amicus* brief in support of the constitutionality of the principle of a sexual offender registration and community notification bill, and assisted with an *amicus* brief supporting broader protections for rape victims; counseling records.

The Attorney General remains the chairperson of the Victim and Witness Assistance Board, which oversees the work of the Massachusetts Office for Victim Assistance (MOVA). MOVA staff continued to administer the award of federal Victim of Crime Act (VOCA) grants to community-based agencies MOVA staff also planned and presented the 1996 Victims' Rights Conference, which was attended by over 400 victim advocates, victimss, and law enforcement and social services professionals. This year's conference focused on issues including child abuse, domestic violence, hate crimes, juvenile justice, teen dating violence, and media crime coverage.

With assistance from the FCCB, MOVA also published the first comprehensive guide for victims in the Commonwealth, entitled *In the Aftermath of Crime: A guide to Victim Rights and Services in Massachusetts*, and an updated guide on court-based advocacy available for domestic violence victims.

MOVA also oversees the ongoing implementation of SAFEPLAN, a program designed to ensure placement of a victim witness civil adovcate in every court in the Commonwealth, to assist victims with their efforts to seek protection from domestic violence. Currently SAFEPLAN is operating in one county on a pilot basis, with plans, and the recent award of grant funding for expansion of the program statewide.

VICTIM COMPENSATION AND ASSISTANCE

The Victim Compensation and Assistance Division provides financial compensation to crime victims for out-of-pocket medical expenses, lost wages and other crime-related expenses. Under a 1994 reform law, the Division assumed legal and administrative responsibility for receiving, investigating and determining all claims for victim compensation in accordance with the requirements of G.L.c 258C. Previously, compensation claims were determined through a litigation-based process in the district courts.

This marked the second full year of the Division's operation as an administrative agency. Throughout the year, the Division sought to achieve two primary goals. First, it sought to conclude a backlog of court-based victim compensation claims that remained pending in the district courts under the prior court-based system. Second, it sought to secure stability in the operation of the administrative system while broadening the scope of the Division's mission in responding to the needs of crime victims.

By year end, the Division had concluded virtually all court-based claims. With the assistance of interns, volunteers and others, a backlog of over 2,000 court-based claims was reduced to 39 pending claims. This accomplishment brings closure to a system long characterized by inefficiencies, delays and frustrations. It marks a true beginning for the Division as a national leader in providing compensation assistance to crime victims.

Within the administrative system, the Division placed primary focus on automation, cost containment, outreach, and quality improvement. As discussed below, the Division realized significant achievements in each of these areas.

1. Automation/claims analysis: Throughout the year, the Division worked closely with the office's Management Information Systems personnel to develop an automated system for receiving, tracking and analyzing compensation claims and payments. Although this process remains incomplete,

significant benefits have already been realized. These include the ability to provide immediate and accurate status and payment information to victims and providers; the ability to maintain better internal management of investigations and case flow; the ability to analyze claims by victim, crime-type, and other factors; and the ability to maintain and analyze payment data on awards for compensation.

Analysis of this data shows that in 1996, the Division received 1,040 claims for compensation. This represents a 9% increase over the previous year. It issued decisions in response to 911 claims. In 607 of these decisions (67%), the Division awarded compensation to the claimant. In 232 cases (25%), the Division determined that the claimant was statutorily eligible for compensation but did not, at present, have expenses that are compensable under the statute. The remaining 72 claims (8%) were denied because the claimant was not eligible for compensation under the Commonwealth's victim compensation statute.

Under G.L. c. 258C, claimants are entitled to seek internal administrative review of the Division's decisions. In 1996, claimants requested administrative reconsideration of 44 (5%) of the Division's decisions. In 14 cases, the Program Director modified or reversed the original decision. The remaining 30 decisions were affirmed on reconsideration. Although claimants are entitled, in addition, to seek judicial review of the Division's decisions, only one such petition was filed in 1996. This petition was dismissed by the court.

Through the Division's automated claims tracking system, claims resulting in payment were further analyzed by crime-type, victim age and state residency. Crime-type data shows that in 1996, 51% of all victims receiving compensation were victims of assault. Homicide claims represented 26% of awards, followed by child sexual assault (8%), domestic violence (6%), adult sexual assault (6%), DWI/DUI (2%) and other (1%).

Analysis of victim age data shows that 20% of all awards involved victims under the age of 17. Victims between the ages of 18 and 65 represented 77% of all awards, while victims over the age

of 65 represented 3% of awards. 95% of all compensation awards were made to Massachusetts state residents. The remaining 5% of awards involved nonresidents who were victimized in the Commonwealth.

Administrative awards were also analyzed for payment information. This data shows that while the Division is statutorily authorized to award up to \$25,000 per claim, the average compensation award in 1996 was \$3,062. The largest category of payments (40%) was for economic support in the form of lost wages and loss of financial support to the family members of homicide victims. Medical and dental expenses represented 28% of all expenses, while funeral and burial expenses represented 24% of expenses. These were followed by mental health counseling expenses (7%) and "other" expenses (homemaker expenses and attorneys fees), representing 1% of expenses.

At the close of the year, the Division maintained a pending administrative caseload of 620 claims. Most decisions were issued within three to six months of receipt. By contrast, the average processing time under the court-based system was two to three years.

2. Expenditures/cost containment: In 1996, the Division awarded \$4.26 million in compensation to crime victims. This represents an 11% increase over the previous year, and a 27% increase over the preceding year. It also represents the largest payout to crime victims in the Division's history. As a result, however, funding was insufficient to support payments through the end of the year. For the second consecutive year, supplemental funding was required to pay all outstanding judgments and awards.

Analysis of claims and payment data show that the Division's funding shortfalls were attributable to the Division's successful efforts to conclude the backlog of court-based claims. As demonstrated by the Division's federal performance reports, the number of claimants receiving payment from the victim compensation fund increased thirty percent (30%) in federal FY95 after

increasing forty percent (40%) in FY94. With the conclusion of the court-based claims, the Division anticipates that its funding needs will stabilize.

Recognizing the need for cost containment and anticipating rising claim numbers in future years, this year the Division undertook a series of cost-containment measures designed to achieve significant savings without placing additional financial burdens on crime victims. Staff investigators assisted eligible crime victims in applying for hospital-based "free care" (G.L.c. 118F) to cover crime-related hospital expenses. They also undertook to negotiate victims' medical, dental and counseling bills with providers. As a result of these negotiations, many providers agreed to accept significantly reduced payments, and to release crime victims from any financial responsibility for the balance.

Through these measures, in 1996 the Division achieved \$628,264 in savings on outstanding medical bills. This represents fifteen percent (15%) of all expenditures. Based on the average award of \$3,062, these savings enabled the Division to award compensation to over 200 additional crime victims. As shown by the Division's federal performance reports, over the past two years, these and other measures have enabled the Division to reduce the average award by thirty percent (30%) while maintaining full coverage of victims' compensable losses.

3. Outreach: The Division continued its efforts to ensure broad public information about the victim compensation program. Applications and brochures were widely distributed to criminal justice agencies and victim service providers. Hospitals throughout the state were notified of eligibility requirements and payment procedures under the administrative system. The Division also conducted training sessions for law enforcement agencies, victim service providers and others.

4. Quality improvement: This year, the Division undertook to further expand the scope and quality of its services to crime victims. It adopted a Mission Statement recognizing both its primary obligation to "determine claims for compensation in an efficient, consistent and professional manner" and its broader role to "work in conjunction with other victim service agencies and providers to ensure

that all crime victims are treated with dignity, respect and compassion." In keeping with this mission, the Division developed a comprehensive Investigative Manual to ensure the consistent and efficient handling of all claims. In addition, all staff received extensive training in victim rights, the criminal justice system, relevant areas of substantive law and victim advocacy. Following this training, the Division actively undertook to ensure that all victims receive information about their rights, and that they receive appropriate referrals to other victim service agencies. It interceded with funeral homes and other providers to ensure prompt delivery of services to victims and their families. It also adopted a practice of ensuring that certain victims are actively informed of the availability of compensation to assist with grief counseling and other crime-related mental health counseling services.

Finally, in conjunction with its efforts to expand its role as a victim service provider, the Division applied for, and was awarded, a grant from the U. S. Department of Justice, Office for Victims of Crime, to plan and host a New England regional conference addressing issues of coordination among victim service providers. The "1996 VOCA Victim Compensation and Assistance Coordination Conference" was held in Boston on June 20-21, 1996. The conference included administrators and directors of victim compensation programs, VOCA victim assistance programs, public sector victim/witness assistance programs, community-based sexual assault and domestic violence programs, and U.S. Attorney victim/witness programs from each of the New England states. It marked the first time that victim service leaders from Massachusetts, Connecticut, Vermont, New Hampshire, Rhode Island and Maine had come together to discuss the coordination of victim services. The conference covered a broad range of structural, funding and coordination issues, and featured several nationally recognized victim service leaders from throughout the country.

PUBLIC PROTECTION BUREAU

The Public Protection Bureau is comprised of five divisions: Consumer Protection and Antitrust Division, Regulated Industries Division, Civil Rights and Civil Liberties Division, Public Charities Division and Civil Investigation Division. The Bureau also has an office of Chief Prosecutor, which brings criminal actions in appropriate cases.

The Bureau contains the Consumer Complaint and Information Section and oversees the Local Consumer Aid Fund, which provides grants to local community groups to mediate and resolve consumer complaints at the local level.

The various divisions in the Public Protection Bureau bring affirmative litigation and criminal prosecutions on behalf of the Commonwealth and its citizens in the areas listed above. The divisions also conduct investigations and publish and issue reports in areas of interest arising out of their activities.

Bureau personnel also coordinate and staff the Attorney General's innovative and successful program to reduce youth violence--SCORE--Student Conflict Resolution Experts. This is a school-based mediation program using trained student mediators to resolve disputes among their peers and prevent the disputes from escalating into violence. This unique program has received national recognition for its success in preventing violence and the Attorney General is committed to expanding it into every school in Massachusetts.

The Attorney General has charged the Bureau with coordinating office efforts and taking the lead in two priority areas--elder issues, and health care. Responding to that charge, the Bureau has developed initiatives and legislation in those areas and will continue to fulfill its role in the coming year. In the elder area, the Bureau sponsored the conference, "Elder Health Care: Crisis at the Crossroads," in October 1995 and published the *Conference Handbook*. Bureau staff have contributed to *AGenda Elderly*, the Attorney General's elder newsletter. The Bureau also helped prepare the

recently-published seminal report on guardianship, entitled *Guardianship In Massachusetts: Where We Are and Where We Should Be Headed*, which draws on national research from other states and input from professionals in the field in formulating recommendations for reform.

Other Bureau publications include *Choosing A Home Care Agency: Important Questions to Ask*; *Attorney General's Guide To Long-Term Care*; and, *Home Health Aides In Massachusetts: A Report And Recommendations*. The Bureau is also participating in the formation of the Home Health Care Industry Working Group, which will facilitate discussion among interest groups in the home health care industry.

Some of the Bureau's accomplishments in the health care area include developing community benefit guidelines for hospitals and HMO's, influencing legislative initiatives in the health insurance and access arenas, and backing legislation that will help safeguard the welfare of patients served by home health agencies and home care corporations. The Bureau is also actively pursuing criminal and civil cases involving health care fraud against both consumers and insurance companies.

Last, the Bureau continues to be actively involved with consumer issues and this year participated in the Attorney General's Consumer University, which presented an interactive series of consumer seminars for Massachusetts elders. The Bureau also published, in cooperation with the Massachusetts Association of Realtors, the widely distributed *Title 5--Facts For Consumers*, a booklet alerting consumers to the potential for problems in complying with the new septic system regulations.

CIVIL RIGHTS DIVISION

Massachusetts Civil Rights Act Cases

The Civil Rights Division continues to demonstrate its commitment to protecting the rights of the citizens of and visitors to the Commonwealth by actively enforcing the Massachusetts Civil Rights Act (MCRA). The MCRA authorizes the Attorney General to seek injunctive relief when the exercise of a person's civil rights is interfered with by threats, intimidation, or coercion based on that individual's race, color, national origin, ethnic background, gender, sexual orientation, disability, age, or religious affiliation.

In fiscal year 1996, the Division's efforts to combat such violent forms of discrimination resulted in the issuance of preliminary injunctions by the Superior Court in three cases against seven defendants, where it was alleged that the defendants had interfered with the rights of Massachusetts residents on the basis of their race, interracial association, religion and national origin. Three final judgments by consent were entered by the Superior Court against eight defendants where it was alleged that the victimization was based on the race, interracial association or religion of the victim. One other final judgment was entered against one defendant based on allegations of privacy violations. In total more than thirty in-depth civil rights investigations of possible MCRA violations were conducted by the Division.

A dramatic example of the Division's effective implementation of the MCRA occurred when it obtained a permanent injunction against an individual operator of a public accommodation who had set up a video camera and other monitoring equipment in the bathroom of his laundromat in Yarmouth. The civil rights injunction banned the use of such equipment in the bathroom and prohibited further interference with the right to privacy of customers of his facility. The defendant also agreed to contribute five thousand dollars to the Attorney General's Local Consumer Aid Fund, for use for public education for privacy and civil rights related issues, forfeit ownership of the equipment used, and

publish a notice in a local newspaper advising potential victims to contact the Office of the Attorney General.

In another significant case, the Division obtained a 10-year final judgment by consent against three male and one female Worcester-area teens, for allegedly threatening and intimidating an interracial couple living in Whitinsville. One youth allegedly identified himself as a member of the Eastern Hammer Skinheads, a nationally-known hate group. The youth allegedly stapled fliers containing racial epithets, threats, and a swastika symbol directly in front of the home of the black victim who was married to a white woman. The fliers threatened bodily harm to any black male who associated with a white female. The Division also obtained a permanent injunction against a youth who allegedly spray-painted racist and anti-Semitic graffiti on private residential property in Concord. As part of the consent judgment, the youth agreed to complete a 20-hour educational program provided by the Anti-Defamation League World of Difference Program. In another important case, the Suffolk Superior Court entered a preliminary injunction against two black youth based on allegations they had viciously and without provocation attacked three white youths on the basis of their race while on the MBTA redline in Dorchester in two separate incidents.

Housing Discrimination

The Division continues its vigorous enforcement of the state's fair housing laws, which prohibit discrimination on the basis of race, color, national origin, religion, sex, sexual orientation, familial status, marital status, source of income (receipt of housing subsidy), age or disability.

In fiscal year 1996, seven new housing discrimination actions were filed in the Superior Court by the Division. These cases involve allegations of discrimination based on race, national origin, gender (sexual harassment), familial status and possession of a housing subsidy. One new case as well as eleven pending cases were favorably resolved through consent agreements during this period.

Settlements included injunctive and affirmative relief provisions, as well as agreements to provide compensatory damages to the victims.

Among the settled discrimination complaints were cases filed in the MCAD on behalf of a couple with a three-month old child, against eight different realtors located in Allston, Brighton, Newton and Brookline, who allegedly refused to rent them an apartment because they had a child under six. The realtors allegedly engaged in a practice of steering tenants with young children away from rental units with lead-based paint, thereby shielding landlords from their statutory obligation to delead rental units occupied by families with children under six years of age. Each of the settlements included prohibitory and affirmative injunctive relief, and provided substantial monetary compensation to the complainants. Under these agreements, most of the defendant real estate companies are required to provide prospective tenants a notice of their rights under the state's lead paint and anti-discrimination laws. Through these and other cases the Division has filed, the Attorney General hopes to modify realtor practices, to educate tenants about the right to fair treatment in the housing market and to increase the availability of safe, affordable housing for families with young children. This Division is also involved in cases that reflect our commitment to protecting the fair housing rights of individuals with disabilities, through its Disability Rights Project.

The Attorney General believes that proactively working with various authorities and organizations through education and outreach is also an effective approach to eliminating housing discrimination. In that regard, in September of 1995, a representative from the Civil Rights Division, in conjunction with representatives from the MCAD and the Massachusetts Board of Realtors (MBR), participated in a "Risk Reduction Seminar" at the MBR's annual convention. The focus of the seminar was on realtor compliance with state and federal fair housing laws, as well as the Attorney General's enforcement obligations under the state's anti-discrimination law, Massachusetts General Law, chapter 151B. As part of its effort at prevention, the Division has also provided comprehensive civil rights and

discrimination training to the entire management staff and at a later training session to all public safety officers of the Boston Housing Authority.

Employment Discrimination

In Fiscal year 1996, an Employment Discrimination Project was initiated in the Civil Rights Division to focus on systemic discrimination in employment. The Project investigates allegations of pervasive discrimination or harassment (race, sex, ethnicity, national origin, age, sexual orientation) in order to determine whether a particular employer or industry is engaged in a pattern and practice of discrimination, affecting substantial numbers of Massachusetts employees. The Division had previously filed a complaint alleging systemic age discrimination against Bull HN, a major information services company, in the MCAD arising out of its ongoing layoff of employees. In fiscal year 1996, a complaint was also filed in the Equal Employment Opportunity Commission ("EEOC") against Bull HN alleging violations of the Older Worker's Benefit Protection Act -- a federal statute that establishes certain criteria an employer must satisfy before obtaining a waiver of an age discrimination claim. The EEOC found probable cause to believe that Bull HN was violating that law and the Division intends to seek injunctive relief and a declaratory judgment in federal court establishing the law in this area.

As an alternative to active litigation, the Project offers training as well as technical assistance on how employers should address systemic problems. For example, the Project is presently working with a large employer in Massachusetts in an effort to ensure that various measures are adopted that would address allegations of sexual and racial harassment. These measures range from instituting a computerized system which keeps track of complaints to improvement of its internal investigation process.

The Employment Discrimination Project also files amicus briefs or intervenes in pending cases in state and federal courts when a legal question is raised which presents an issue of public

importance. In fiscal year 1996, the Project filed an amicus brief in the Supreme Judicial Court in a case entitled Melnychenko v. 84 Lumber Company. This case raised two issues of public importance: the scope of sexual harassment protection of employees under G.L. c. 151B and the validity of a waiver in a termination agreement which precluded a former employee from cooperating with the EEOC or MCAD in an ongoing investigation of discrimination.

Mortgage Lending Discrimination

Since November 1992, the Division has been involved in a comprehensive attack on fair lending barriers in the home mortgage lending industry in Massachusetts. In March 1994, the Attorney General, the Massachusetts Bankers Association (MBA) and 27 banks and mortgage companies entered into an unprecedented and far-reaching agreement to effect systemic reform of the mortgage lending industry in Massachusetts. Under the three-year agreement, the MBA agreed to establish six statewide programs and initiatives to encourage fair lending and to increase mortgage lending in urban and low and moderate income communities in Massachusetts.

In December of 1995, the Division was invited by the Massachusetts Bankers Association to speak at the graduation ceremony for the second class (of twenty-five students) that graduated from the Roxbury Community College Mortgage Lending Career Development Education Program designed and established as a result of the agreement. As of that date, approximately seventy-five minority enrollees have graduated from the program's four different locations (Roxbury Community College, Northern Essex Community College in Lawrence, Bristol Community College in New Bedford, and Springfield Technical Community College). In addition, approximately twenty-five of those students have already secured permanent employment in the mortgage lending industry.

Women's Constitutional Right To Choose

In furtherance of the right of women in Massachusetts to access to the health care of their choice, the Division continues to offer legal advice and training to clinics offering abortion services

and to police departments responsible for maintaining safe access to clinics in their jurisdiction. The Division also lobbied on behalf of the Attorney General in support of the recently passed bill to extend insurance coverage to state employees for abortion-related services.

In January of 1996, the Division filed an amicus brief in the Supreme Judicial Court on behalf of the plaintiffs in Planned Parenthood Inc. v. Bell. The Attorney General supported the authority of a court under common law to order an anti-abortion protestor, based on her conduct, to stay a defined distance from the entrance to a medical clinic where abortions are performed.

Sexual Orientation Discrimination In Employment, Housing and Public Accommodations

In June 1995, the Attorney General joined a friend of the court brief in the U.S. Supreme Court arguing against a state constitutional amendment that prevented Colorado or any of its local governments from protecting gays and lesbians from any form of discrimination including discrimination in employment, housing and public accommodation. The Massachusetts Attorney General's Office was the first of six states in the nation to join the brief of the Oregon Attorney General's Office which argued against the legality of Colorado's constitutional amendment. The Division helped structure the legal arguments contained in the Oregon brief and enlisted additional legal support from other states for the amicus brief. In May 1996 the Supreme Court in Romer v. Evans declared this Colorado anti-gay amendment unconstitutional. The legal analysis used in the landmark decision was consistent with the arguments in this amicus brief which maintained that the amendment denied a fundamental right to an independently identifiable group, and violated the Equal Protection Clause to the Fourteenth Amendment to the United States Constitution.

Right To Privacy

In fiscal year 1996 the Division responded to citizen complaints that a local telephone company was taping calls to and from its sales force without the knowledge or consent of the

customers in violation of state wiretap law. As a result of the Attorney General's intervention, the company discontinued the practice and distributed an advisory to all its commercial clients on the law regarding taping of telephone communications.

The Division is also involved in an ongoing effort to monitor the practices of the health care industry with regard to maintaining medical records confidentiality in the face of burgeoning communication technology.

The Division revised and updated a 1989 Massachusetts Bar Association public service pamphlet titled "How to Protect Your Privacy." The pamphlet, published in May 1996, addresses the broad array of areas where privacy rights may be implicated: government records, credit reports, school records, insurance and employment reports, medical information, employee records and social security numbers.

Police-Related Matters

In a cooperative effort to promote civil rights, assist the police, and provide departments with technical assistance, the Division has continued to provide an extensive amount of civil rights training to police departments covering issues of civil liability, sexual harassment, racial and cultural awareness and hate crimes. The Division has sponsored many training sessions for police officers and police supervisors in cities and towns throughout Massachusetts, including Boston, Cambridge, Fall River, Framingham, Provincetown and Revere as well as for police departments located throughout Martha's Vineyard. The Division also provided intensive civil rights training to police cadets attending regional police academies located in Canton, Medford, and Somerville. The Division also made presentations on civil rights at the Massachusetts Bar Association educational program for campus police officers and attorneys in October 1995. The Division also made a presentation on hate crime identification, investigation and enforcement at the Attorney General's statewide conference on Juvenile Policing Issues for juvenile officers in April 1996.

The Division has also continued to investigate allegations of police misconduct, and has worked with departments to take remedial steps when credible evidence is found to substantiate the complaints

OTHER SIGNIFICANT DIVISION INITIATIVES

Race And Ethnic Bias In The Courts

As a result of the findings in the report of the Supreme Judicial Court Commission on Race and Ethnic Bias in the Courts issued in September 1994, the Division has taken a leadership role in the formation of an office-wide Task Force. The Division Chief chairs the Attorney General's Task Force on Race and Ethnic Bias in the Courts and Division staff serve as active members. The Task Force consists of subcommittees on Cultural and Linguistic Barriers to the Justice System, Education and Training, Sentencing, and Jury and Jury Pools. In an effort to address cultural and linguistic barriers in the courts, the Task Force has prepared a booklet to assist victims of domestic violence to understand their rights and provide them with helpful resources and contacts. The booklet will be available in eight languages: English, Chinese, Vietnamese, Khmer, Portuguese, Spanish, Creole, and Russian.

The Chief of the Division authored or coauthored six chapters for a Massachusetts Bar Association book published in May 1996 for judges and attorneys titled "Ensuring Equal Justice: Addressing Cultural and Linguistic Differences in the Courts of Massachusetts." The chapters survey the law nationwide on cultural and linguistic issues in both criminal and civil proceedings. The book was distributed to all state court judges at an All Judges Conference in May of 1996.

Hate Crimes Task Force

The Chief of the Division continues to chair and Division staff continue to actively participate in the Attorney General's Interagency Law Enforcement Hate Crimes Task Force. The Task Force consists of federal, state and local prosecutors and law enforcement officials. Its focus is to coordinate efforts to investigate and prosecute hate crimes occurring in the Commonwealth. It also

organizes and sponsors presentations on an ongoing basis to develop increased expertise and cooperation among law enforcement on these important issues. In September of 1995, an anti-terrorism specialist with the FBI made a presentation on domestic and international terrorism and militias and the role of state and local law enforcement. In May of 1996, the Task Force invited the Deputy Director of the Southern Poverty Law Center's Klanwatch Project who addressed law enforcement representatives from the New England states, including Attorneys General offices and United States Attorneys' offices, regarding the criminal activities of national and local extremist organizations, organized hate groups and militias.

Civil Rights In The Schools

The Division has been active in education and outreach efforts on civil rights issues within the state's public school system. Its goal is to assist in educating students and staff about their rights and responsibilities as it relates to hate crimes, discrimination and sexual and racial harassment in schools. As part of its civil rights collaboration with the Boston School Department, Division attorneys have organized special civil rights training programs for police, school administrators and other staff of the Boston School Department to identify and respond to civil rights issues in the Boston public schools. In May 1996, the Division also trained the entire administrative staff and teachers at the Gavin Middle School on civil rights issues. The Division also played an instrumental role in organizing and making presentations at the Attorney General's Annual Conference of Civil Rights in the Schools held in March 1996. The conference was attended by teachers, school administrators and law enforcement officials statewide. The Division has also worked closely with the Massachusetts Bar Association and the Boston School Department to develop a sexual harassment curriculum for seventh and eighth grade public middle school students in Boston.

The Division also made presentations on civil rights in schools at a conference sponsored by the Essex County District Attorney's office in February 1996 and the U.S. Department of Justice

Community Relations Service sponsored conference for the New England region in March 1996, with particular emphasis on the Attorney General's collaboration in developing a model civil rights prevention program with the Boston School Department.

Legislative Initiatives

The Division played a leading role in the drafting of statutory language and the lobbying for the successful passage of an amended state hate crimes statute. The bill amends G.L. c. 265, § 39, by extending the protection of this criminal civil rights statute to persons who are victimized by a crime because of their sexual orientation or disability. In addition, the bill permits a felony prosecution for criminal acts where serious bodily harm results, where previously such violations under the statute were misdemeanors. Finally, the bill provides restitution to the victim for monetary losses incurred due to property damages from being a victim of a hate crime.

DISABILITY RIGHTS PROJECT

Ensuring Equal Access To Private Businesses

After litigation was initiated against the Royal Plaza Hotel and Trade Center of Marlborough in the Spring of 1995, the Disability Rights Project of the Division negotiated a consent judgement with the defendants. The August 1995 court-approved settlement established a six-month timetable for the hotel to address the eighty alleged violations of state and federal disability access laws, cited in the complaint. In addition to the court-approved time-frame for correcting the barriers to access for people with disabilities, the consent judgment also provided that the hotel pay ten thousand dollars to be used by the Commonwealth for the publication of consumer protection materials in alternative accessible formats, such as audiotape and braille, for individuals with visual impairments.

Following up on a complaint from an elderly couple concerning the failure of the three movie theaters on Martha's Vineyard install assistive listening devices for individuals with hearing impairments, the Project informed the theater owners of their legal obligation to install auxiliary aids

and services to remove communication barriers. After a series of discussions, an agreement was reached which provided for installation of the listening devices prior to the opening of the theaters for the summer season.

A family complained to the Project that the YMCA summer camp program on Cape Cod was not providing adequate camp opportunities and services to campers with disabilities. Project staff met with representatives of the Y and reviewed their policies and practices concerning disabled campers with them. An agreement was reached which provided that the camp would hire a specialized coordinator to oversee the services provided to campers with disabilities and to encourage their applications. In addition the camp agreed to review all of their policies to eliminate any that had an unintended negative effect on those campers.

Office staff participated as a member of an advisory group to the newly constructed Fleet Center. The group shared its experience and expertise with the owners and operators of the Fleet Center so the Center would be able to address effectively the physical and communication access needs of the Fleet Center's patrons with disabilities.

Protecting Fair Housing Rights Of Individuals With Disabilities

The Disability Rights Project of the Division filed an amicus brief ("friend of the court") in the Supreme Judicial Court in Watros v. Greater Lynn Mental Health. The Project's brief supported a local zoning board of appeals' decision in favor of the town of Winchester's issuance of a special permit for the placement of a group residence for the mentally retarded. The zoning board decision had been successfully challenged by a neighbor in Superior Court. The Supreme Judicial Court in August 1995 reversed the Superior Court decision, consistent with the position we had urged: that an educational use exemption under Massachusetts General Law, chapter 40A covers the use of a carriage house as a community residence.

An attorney representing the Protestant Guild for the Blind contacted the Project concerning his clients' efforts to rent an apartment as a community residence from a realtor in Arlington. After a series of inquiries concerning the nature of the prospective tenants' disabilities, the rental deposit was returned and the agreement to rent was canceled. Project staff contacted the realtor to explain the fair housing implications. The realtor indicated his willingness to execute the lease but the owner continued to refuse to rent the apartment. After discussions with counsel for the realtor and the owner, the apartment was made available to the tenants with disabilities.

Counsel for the May Institute contacted the Project because a city on the south shore had imposed more requirements on a community residence for individuals with mental retardation than would have been imposed on non-disabled residents. In order to comply with some of the licensing requirements from DMR, such as providing a second means of egress, the residence needed modification of the city's zoning setback requirements. The city had been unwilling to modify their requirements and had refused to issue the necessary permits. After Project staff had a series of conversations with the city solicitor, the city agreed to issue the previously withheld occupancy permits.

Community Education

Consistent with the strong emphasis upon community education articulated by the Attorney General at the inauguration of the Disability Rights Project, the Project has emphasized programs to increase people's understanding of and compliance with disability rights laws. Those efforts included: --Addressing some of the misinformation that existed with regard to the "handicapped parking/placard program," the Project, in cooperation with the Registry of Motor Vehicles and the Massachusetts Office on Disability, issued an advisory to all cities and towns concerning the Registry's "handicapped plate/placard program;"

--Establishing and implementation of a prototype training program on state and federal employment discrimination law for municipalities and not-for-profit organizations;

--Co-sponsoring and participating in two workshops at the statewide ADA conference: "ADA Without Fear--Solutions for Local and State Government";

--Making presentations on the legal obligations imposed upon municipalities by Title II of the ADA at the annual statewide conference of Small Town Administrators Association, and at a regional Municipal Law Forum sponsored by various members of the state legislature;

--Making presentations on the requirements of the ADA as it relates to educational institutions at an all-day faculty training program at Holyoke Community College and at a statewide ADA conference;;

--Providing training on the fair housing rights of individuals with disabilities at a Massachusetts Continuing Legal Education program, at a Department of Mental Health Human Rights Conference and at the annual conference of the Association of Retarded Citizens Massachusetts, and publication of a pamphlet concerning the fair housing rights of individuals with disabilities under state and federal law; and

--Making presentations on the work of the Disability Rights Project on several cable television shows, at Suffolk University Law School and at a Massachusetts Continuing Legal Education program.

CONSUMER PROTECTION AND ANTITRUST DIVISION

The Consumer Protection and Antitrust Division enforces Massachusetts General Law chapters 93 and 93A as well as other state and federal consumer protection and antitrust statutes. The Division's case load primarily consists of actions affecting large numbers of vulnerable consumers who have been harmed by illegal activities, particularly fraud. Additionally, the Division seeks to protect and promote competition so that consumers are offered goods and services of higher quality at lower prices. Other efforts include regulatory and legislative activities, participating in consumer out reach, and mediating individual complaints through the Consumer Complaint and Information Section and the Local Consumer Programs.

In fiscal year 1996, the Division obtained judgments or entered into settlements for the following amounts:

MONEY RECOVERED

CIVIL PENALTIES/ATTORNEYS' FEES/COSTS	\$1,120,900
CONSUMER RESTITUTION	\$3,240,468
LOCAL CONSUMER AID FUND	\$ 122,500
OTHER:	
Fleet/Shawmut Merger	\$175 million small business loan program \$25 million loan programs for home rehabilitation loans and affordable housing mortgages
Liggett Group, Inc.	2.5% of Liggett's pre-tax profits to Massachusetts for the next 25 years
R.M. Packer Co., Inc.	\$12,500 worth of home heating oil to be provided to the South Shore Community Action Council Fuel Assistance Program

ADOPTION SERVICES

Comm. v. Madeline Daniels and Cambridge Adoption and Counseling Associates, Inc.

In fiscal year 1995, CPAD filed an action against CACA, and its director Madeline Daniels. The case alleges a variety of unfair and deceptive acts such as: misrepresenting fees; misrepresenting services; failing to provide services; negligent referral to incompetent agents; and withholding final approval of adoptions to collect disputed fees.

In the past fiscal year, CPAD has opposed numerous motions filed by the defendants including: Defendants' Motion for Preliminary Injunction; Defendants' Motion for Impoundment; Defendants' Amended Motion for Impoundment; Defendants' Motion for Partial Summary Judgment; Defendants' Motion for Protective Order. With the exception of the last motion for a Protective Order relating to the deposition of defendant Madeline Daniels, all motions were denied.

Comm. v. Adoption Center, Inc. and Judith Bailey

This is an action alleging consumer protection and other violations by an adoption placement agency and its former Executive Director. On June 17, 1996, the Court entered a protective order to protect the confidentiality of adoptive parents and other persons who may be identified in documents of the adoption placement agency that might be produced during discovery.

AMICUS BRIEFS

Smiley v. Citibank

On March 1, 1996, CPAD filed an amicus curiae brief on behalf of 25 states, urging the Court to protect consumers by not allowing national banks to ignore the credit card late charge laws of the respective states of their customers. On a broader level, the brief argued that a decision in the banks' favor would decimate efforts to enforce state consumer protection laws and would undermine state sovereignty. However, on June 3, 1996, the U.S. Supreme Court ruled a national bank must only comply with the laws of its "home state," in this case, South Dakota.

Urman v. South Boston Savings Bank

On April 12, 1996, CPAD filed an amicus brief in support of certain consumers' appeal from a decision of the Norfolk Superior Court. The Superior Court had held that the South Boston Savings Bank had not violated c. 93A by failing to disclose to two home buyers that their new home was located on a toxic contamination clean-up site and was surrounded by toxic contamination. The amicus brief asserted that the failure to disclose the contamination problem amounted to a material fact that may have reasonably influenced home buyers not to enter into the transaction and thus violated c. 93A, § 2(a) and 940 C.M.R. § 3.16(2). The case is pending.

Greenfield Country Estates Tenants Association, Inc. v. Deep

On June 26, 1996, the Supreme Judicial Court upheld the rights of certain mobile home residents to exercise their statutory right of first refusal under the Manufactured Housing Act. CPAD had filed an amicus brief in support of the residents and participated in oral argument at both the trial and SJC levels, addressing the defendants' takings challenge to the statutory provision creating the right of first refusal. The court rejected this constitutional challenge, reasoning that since the statute did not deprive an owner of economically viable use of his property, it did not constitute a taking.

ANTITRUST

Fleet-Shawmut Merger

On September 14, 1995 the office entered into an agreement with Fleet Financial Group approving the merger of Fleet with Shawmut National Corporation. To resolve competitive concerns, the agreement requires Fleet to divest 18 bank branches statewide to insure the continued competitive marketplace for Massachusetts consumers.

The centerpiece of the agreement is a program that provides \$100 million in prime interest rate loans to small businesses. The loans will be available statewide, but will be targeted to assist low

and moderate-income neighborhoods, and directed to companies seeking to add new jobs to the economy. A minimum of 1,000 small businesses must receive loans under the agreement.

The agreement also provides for \$75 million in loans under the U.S. Small Business Administration's lending program. For these loans, Fleet has agreed to waive the 2 percent guarantee fee charged under the SBA program and to provide a 1 percent interest rate reduction for half of the loans made under the program. The agreement also provides for \$25 million in funding for rehabilitation loans and affordable housing mortgages as well as a commitment to maintain or increase its level of charitable contributions.

Comm. v. SSC Associates, L.P. and Stop & Shop Companies, Inc.

On October 31, 1995, CPAD filed a consent judgment authorizing the merger of the Stop & Shop and Purity supermarket chains. The agreement required Stop & Shop to divest 17 stores in areas in which the merger might have adversely affected consumers. The consent judgment also required Stop & Shop to continue to operate two inner-city supermarkets or to sell those two stores to a buyer that would continue to operate the stores as a supermarket.

The agreement also requires Stop & Shop to seek the prior approval of the AG before acquiring any additional supermarkets in eastern Massachusetts in the next two years and to pay \$10,000 in costs to the Attorney General's Office.

In the Matter of Berkshire Health Systems, Inc.

On January 3, 1996, CPAD filed an assurance of discontinuance resolving concerns that certain individuals at Berkshire Medical Center had entered into or required exclusive contractual agreements with Blue Cross and Blue Shield of Massachusetts and had agreed to or solicited a boycott of Hillcrest Hospital in Pittsfield, and/or Harvard Community Health Plan. The agreement requires Berkshire Health Systems to pay \$75,000 to the Commonwealth: \$50,000 to the Local Consumer Aid Fund, to be used by SCORE, and \$25,000 for costs of the investigation.

In addition, the agreement required Berkshire Health to refrain from any exclusive agreement with any third-party payor or health care provider and to negotiate in good faith, subject to availability of services, with any and all third party payors and health care providers seeking entry or expanding their access within the Berkshire market.

Comm. v. R.M. Packer Co., Inc.

On March 19, 1996, CPAD filed a consent judgment in Dukes Superior Court requiring R.M. Packer Co., Inc. to pay the Commonwealth \$10,000 in lieu of civil penalties and to provide, free of charge, home heating oil worth \$12,500 to the South Shore Community Action Council Fuel Assistance Program. CPAD's antitrust lawsuit alleged that Packer solicited other home heating oil retailers to fix the price of home heating oil sold to customers on Martha's Vineyard. The consent judgment also prohibits R.M. Packer from fixing, arranging to fix, facilitating or agreeing to fix the price of home heating oil.

In the Matter of Partners Healthcare System and North Shore Medical Center, Inc.

On March 29, 1996, the CPAD filed an assurance of discontinuance in Suffolk Superior Court with Partners Health Care System, Inc. ("Partners") and The North Shore Medical Center, Inc. ("North Shore") which limits the number of physicians the merged system can control. The merged system includes the Partners Health Care System hospitals (Massachusetts General Hospital, Brigham & Women's Hospital, and Spaulding Hospital) and The North Shore Medical Center hospitals (Salem Hospital and Shaughnessy-Kaplan Hospital, Inc. of Salem).

Under the terms of the assurance, the total number of physicians that Partners employs, has a controlling interest in, or has an exclusive risk contract with, cannot exceed 40% of the available primary care physicians, pediatricians, and obstetrician-gynecologists in the area comprised of 26 North Shore communities.

The assurance also requires Partners to report to the Attorney General periodically on its compliance with the physician cap, and prohibits Salem Hospital from requiring physicians to participate in The North Shore Health System as a condition of appointment to the medical staff.

In the Matter of Southcoast Health System

On June 11, 1996, CPAD filed an assurance of discontinuance in Suffolk Superior Court which allowed the merger of Charlton Hospital in Fall River and St. Luke's Hospital in New Bedford to go forward and the formation of Southcoast Health System. Tobey Hospital in Wareham is the third hospital involved in this merger.

The assurance requires the hospitals to maintain a community-based board, to not raise rates to third party payers for inpatient services more than the medical consumer price index for the next three years and to file yearly financial reports with the Attorney General.

Bank of Boston-BayBank Merger

On June 18, 1996, after an extensive antitrust review conducted in conjunction with the Department of Justice, CPAD approved the merger of Bank of Boston and Baybanks. The approval came in the wake of the proposed sale to USTrust of a total of twenty BayBank and Bank of Boston branches with \$860 million in deposits.

The joint merger review revealed a potential threat to competition for middle market commercial and industrial loans in Massachusetts. The sale of the twenty branches and the transfer of the associated deposits and loans to USTrust addresses the competitive concerns raised by Bank of Boston's acquisition of BayBank.

United States, et al. v. The Thomson Corporation and West Publishing Company

On June 19, 1996, Massachusetts, along with the Department of Justice and the Attorney's General of six other states filed a joint antitrust suit and consent judgment against Thomson Corporation and West Publishing Company the nation's largest legal publishers. The merger raised

antitrust concerns that were addressed in a settlement with the two companies that was filed along with the lawsuit.

The settlement requires Thomson to divest a large number of publications that compete directly with West publications, including the Annotated Laws of Massachusetts, Massachusetts Landlord-Tenant Law, United States Code Service, United States Reports, Lawyers' Edition and Auto-Cite, among others. The total value of the divested products is in the range of \$275 to 300 million.

Other terms of the settlement require Thomson to grant to Lexis-Nexis options to extend for five years its current licenses for three important databases: Investext, ASAP, and Predicasts. The settlement also requires Thomson to license to any third party the right to use the internal pagination in all publications in West's National Reporter System.

AUTOMOBILES

Comm. v. Paul Gibbons d/b/a Specialty Cars of New Hampshire, et al.

On September 18, 1995, CPAD filed a complaint against Paul Gibbons d/b/a Specialty Cars of New Hampshire, an unlicensed used car dealer who was selling cars that failed to pass inspection or were otherwise defective, and refusing to repair the cars or make refunds to consumers. The dealer also violated the automobile advertising regulations, and various other regulations regarding used car dealers. A preliminary injunction was issued on October 16, 1995, which enjoins the defendants from further unlicensed sale of automobiles.

"Sour Deals Sting"

Comm. v. A-Classic Auto Body and Repair

Comm. v. Automaster

Comm. v. Cambridge Auto

Comm. v. CarQuest Auto Sales

Comm. v. Dodakin's Auto Sales

Comm. v. Global Motor's Inc.

Comm. v. Grant's Cars Are Us Auto Sales

Comm. v. Harbor Auto Sales, Inc.

Comm. v. Main Street Auto Sales
Comm. v. Main Street Auto Mart
Comm. v. Mutual Auto Sales
Comm. v. St. James Auto Sales
Comm. v. Tom-E's Auto Sales, Inc.
Comm. v. Tryba Auto Sales
Comm. v. Unique Motors, Inc.

In fiscal year 1996, CPAD, in conjunction with the Civil Investigative Division conducted a statewide survey of car dealers for compliance with state and federal car warranty notice and pricing regulations.

Under federal law, dealers must post notices on all used cars for sale, informing consumers of their right to express or implied warranties. State law requires dealers to post notices to inform consumers that they have 30, 60 or 90 days to have repairs performed on vehicles under warranty, depending on mileage, when the vehicle costs at least \$700. In addition, all vehicles sold in the Commonwealth must have a posted price, and are subject to an "implied warranty."

Each of the above referenced cases was resolved through the filing of a consent judgment requiring the dealer to post clearly all appropriate notices on vehicles offered for sale to the public, including an offering price, in the future. Each dealer was also required to pay a civil penalty of \$1,000.

Comm. v. Visone Motors, Inc., et al.

In fiscal year 1996, CPAD oversaw the continued implementation and conclusion of the restitution process required by a 1993 consent judgment entered with Visone Motors, Inc. Pursuant to the consent judgment, Visone was required to offer a fair and reasonable settlement to each of the over 200 consumers who filed complaints with the Office. If the settlement was not acceptable to the consumer, the matter went to an arbitrator who proposed a resolution that Visone was required to implement.

Over 200 consumers had their complaints resolved through the settlement or arbitration process, with over \$415,000 in cash or merchandise distributed to consumers.

Automobile Advertising Cases

Comm. v. Village Automotive Group, Inc. et al.

On August 15, 1995, a complaint and consent judgment were filed, enjoining Boston Toyota and Boston Volvo Village from running misleading or deceptive advertisements and requiring them to pay \$5,000 in penalties. The complaint alleged that the dealership violated Massachusetts automobile advertising regulations by advertising used cars for sale without clearly and conspicuously disclosing that the cars were used and by using term such as "loaded" or "fully equipped" to describe autos offered for sale.

Comm. v. Copeland Toyota

On October 26, 1995, a complaint and consent judgment were filed, enjoining Copeland Toyota from running misleading or deceptive advertisements and requiring them to pay \$2,500 in penalties. The complaint alleged that the dealership violated Massachusetts automobile advertising regulations by advertising used cars for sale without clearly and conspicuously disclosing that the cars were used and by advertising a sale without clearly and conspicuously disclosing the expiration date of the sale.

Comm. v. Kelly Jeep Eagle, Inc., et al.

On February 14, 1996, a complaint and consent judgment were filed, enjoining Kelly Jeep Eagle, Inc., Roland D. Kelly Buick, Inc., and Roland D. Kelly Infinity, Inc. from running misleading or deceptive advertisements and requiring them to pay \$2,500 in costs to the Commonwealth and \$2,500 to the Attorney General's SCORE program. The complaint alleged that the dealership violated automobile advertising regulations by advertising used cars for sale without clearly and conspicuously

disclosing that the cars were used and by advertising car leases without disclosing further information required by federal law and regulation.

CIVIL FORFEITURE

Comm. v. One 1993 Mitsubishi Eclipse

This is a civil forfeiture action filed in Middlesex Superior Court in fiscal year 1995, involving the forfeiture of an automobile that was used in connection with illegal drug activity. The action is an in rem proceedings brought pursuant to the provisions of G.L. c. 94C, § 47(d). An agreement for judgment was filed on October 25, 1995, whereby judgment entered in favor of the Commonwealth for forfeiture of the vehicle.

Comm. v. One 1988 Honda Accord Sedan

This is a civil forfeiture action brought in Worcester Superior Court on July 18, 1995, involving the forfeiture of an automobile that was used in connection with illegal drug activity. The action is an in rem proceedings brought pursuant to the provisions of G.L. c. 94C, § 47(d).

Commonwealth v. One Thousand Six Hundred Twenty Seven Dollars

This is a civil forfeiture action brought in Suffolk Superior Court on July 28, 1995 involving the forfeiture of cash that allegedly was used in connection with illegal drug activity. The action is an in rem proceedings brought pursuant to the provisions of G.L. c. 94C, § 47(d).

FINANCIAL

Comm. v. Richard North & North Asset Management, Inc.

On July 7, 1995, CPAD obtained a default judgment against Richard North and North Asset Management, Inc. CPAD alleged in its complaint that North, individually and in his capacity as an officer and director of North Asset Management, Inc., solicited and received over \$450,000 from consumers purportedly for the purpose of investing the money. Some or all of the investments were never made and the funds were dissipated by the defendants.

The default judgment permanently enjoins North from providing financial services to the public and requires the payment of \$871,232.30 in restitution to consumers and \$70,000 in civil penalties.

Comm. v. John Corcoran, d/b/a Tempest Corporation

On July 10, 1995, CPAD filed a complaint in Barnstable Superior Court against John Corcoran d/b/a Tempest Corporation. The complaint alleges that Corcoran operated an illegal pyramid scheme that he marketed as a "profit sharing plan." The pyramid scheme provided that in exchange for \$10, a consumer is entitled to receive a variety of stationery to use to recruit new consumers. Each consumer received \$1 per month for every other person they recruited into the program.

Check Cashing Cases

Comm. v. Felipe Castillo d/b/a Emilio's Market

Comm. v. Fiesta Exchange Services, Inc.

Comm. v. Sosa's Furniture Store, Inc.

Comm. v. Felix Rodriguez d/b/a Fargo's Express

Comm. v. Colon's Place, Inc.

Comm. v. Calling Center Services, Inc.

In August, 1995, CPAD filed suit against six check cashing companies for allegedly cashing checks without having the required licenses from the Division of Banks. Of the six, three have been resolved through the entry of consent judgements enjoining the operation of unlicensed check cashing operations and requiring the payment of a civil penalty. The cases resolved through consent judgments are:

Comm. v. Fiesta Exchange Services, Inc. - \$1000 civil penalty

Comm. v. Sosa's Furniture Store, Inc. - \$2500 civil penalty

Comm. v. Colon's Place, Inc. - \$1500 civil penalty

A fourth case, Comm. v. Felipe Castillo d/b/a Emilio's Market, was resolved through the entry of a default judgment, enjoining the operation of an unlicensed check cashing operation and requiring the payment of a \$5,000 civil penalty. The remaining cases are currently in litigation.

Also in August, 1995, CPAD filed assurance of discontinuance in Suffolk Superior Court against six additional check cashing companies for alleged violations of Division of Banks regulations. The alleged violations include failure to post fee schedules, licenses and information on how to file a complaint with the business and the Division of Banks. Other alleged violations include failure to provide receipts to customers that contain information such as the check casher's name and license number, the date of the transaction and the amount of the check casher's fee. Each of the assurances prohibits the alleged illegal activity, requires the companies to comply with applicable regulation and requires the following monetary payments:

In the Matter of Shriji Variety Store, Inc.
\$1000 civil penalty

In the Matter of The Pawn Shop, Inc. d/b/a The Money Stop
\$1000 civil penalty

In the Matter of Boston Check Cashers, Inc.
\$500 to Local Consumer Aid Fund and \$500 civil penalty.

In the Matter of Samir Sidhom d/b/a American Check Cashing
\$500 civil penalty

In the Matter of Chios Enterprises, Inc. d/b/a American Check Cashing
\$500 civil penalty

In the Matter of Tiffany Corporation d/b/a Easy Check Cashing
\$500 civil penalty

In the Matter of Randolph L. White, II

On November 17, 1995, the Court granted the Commonwealth's Motion for Summary Judgment on its Adversary Complaint that the Debtor should be denied a discharge for failing to obey

lawful orders of the Court. The Commonwealth had concluded its c. 93A trial against the Debtor in Suffolk Superior Court in September, 1995 and is waiting for the Superior Court to issue its findings.

Comm. v. DTM Financial Services et al.

On April 11, 1996, CPAD filed a complaint against DTM Financial Services, a credit repair services company for allegedly misrepresenting the effectiveness of its "credit repair kits" to remove all negative items from consumer credit reports. This action was filed as part of joint effort with the FTC called "Operation Payback." A TRO and preliminary injunction were obtained prohibiting DTM, its affiliates and owners/operators from accepting payment until full and complete satisfactory performance of credit repair services is provided to consumers. This case was one of several to be brought nationwide to enforce the FTC's new Telemarketing Sales Rule.

GENERAL

In the Matter of Gregory P. Stamas

An assurance of discontinuance was filed on August 3, 1995, in Suffolk Superior Court, whereupon Gregory P. Stamas agreed to refrain from engaging in the business of marketing and selling of baby furniture in the future. The Attorney General alleged that Gregory P. Stamas violated the Massachusetts Consumer Protection Act, G.L. c. 93A, §2(a) and the Attorney General's Regulations by: failing to perform services, in whole or in part, in accordance with his agreements with consumers and misrepresenting the exact nature and extent of his refund policy and failing to perform promises made to consumers in connection with the refund policy.

In the Matter of George P. Stamas

An assurance of discontinuance was filed on August 24, 1995, in Suffolk Superior Court, whereupon George P. Stamas agreed to refrain from engaging in the business of marketing and selling of baby furniture in the future. The Attorney General alleged that George P. Stamas violated the Massachusetts Consumer Protection Act, G.L. c. 93A, §2(a) and the Attorney General's Regulations

by: failing to perform services, in whole or in part, in accordance with his agreements with consumers; representing to consumers that he would provide baby furniture in a timely manner when, in fact, he had no intention of doing so; soliciting and accepting money from consumers for particular services when, in fact, he had no intention of performing such services; misrepresenting the exact nature and extent of his refund policy and failing to perform promises made to consumers in connection with his refund policy; and making false and deceptive representations concerning delivery of the baby furniture.

In the Matter of Paul G. Stamas

An assurance of discontinuance was filed on August 22, 1995, in Suffolk Superior Court, whereupon Paul G. Stamas agreed to refrain from engaging in the business of advertising, marketing, and selling of baby furniture in the future. The Attorney General alleged that Paul G. Stamas violated the Massachusetts Consumer Protection Act, G.L. c. 93A, §2(a) and the Attorney General's Regulations by: failing to perform services, in whole or in part, in accordance with his agreements with consumers; representing to consumers that he would provide baby furniture in a timely manner when, in fact, he had no intention of doing so; soliciting and accepting money from consumers for particular services when, in fact, he had no intention of performing such services; misrepresenting the exact nature and extent of his refund policy and failing to perform promises made to consumers in connection with his refund policy; making false and deceptive representations concerning delivery of the baby furniture; making false and deceptive representations concerning the nature of the business he conducted, his qualifications to conduct it, and the services provided; engaging in deceptive advertising; making false and deceptive representations concerning his lay away plans; and failing to provide consumers with written notice that payments made under the lay away plan were not refundable and keeping deposits after cancellation of the sales agreement.

In re NNLC Corp.

In September, 1995, the Attorney General distributed nearly \$19,000 in refunds to Massachusetts consumers of Lectra City, an electronic store chain that went into bankruptcy. The Attorney General had filed a proof of claim in bankruptcy court on behalf of the consumers.

Comm. v. New England Marketing Services, Inc., et al.

On November 8, 1995, the Attorney General obtained a Judgment against New England Marketing Services, Inc. and its principal, Pierre Valdejuli, ordering Mr. Valdejuli to pay more than \$330,000 in restitution and \$250,000 in civil penalties under c. 93A section 4. The defendants had sold time-share units to consumers but had failed to deliver deeds or refunds.

Comm. v. V&M Management, Inc.

This is a still pending civil action against the owner of a 276-unit HUD subsidized housing complex known as Westminster Willard a/k/a Mandela. It is alleged that the owners engaged in unfair and deceptive practices by violating a multitude of federal and state laws and regulations governing the rental of subsidized housing. In 1995, the Commonwealth opposed the defendants' motion to remove the case to federal court, and the federal court remanded it. In 1996, the defendants' property was placed under the authority of a trustee in bankruptcy, and is in the process of being brought into compliance with applicable laws and regulations. The grounds for seeking appointment of a trustee were financial mismanagement of the property and failure to pay taxes.

Comm. v. John Amaral d/b/a U.S. College of Music

On March 8, 1996, a consent judgment was filed in Suffolk Superior Court prohibiting John Amaral, doing business as U.S. College of Music, from engaging in misleading business practices. Under the judgment, Mr. Amaral is enjoined from using the designation "college" in the name of his business without obtaining the necessary authority from the Secretary of State; offering degrees without

being authorized to award degrees by the Secretary of State; and operating a correspondence school in the Commonwealth without being licensed by the Commissioner of Education.

The consent judgment also requires the payment of \$2,300 as civil penalties to the Attorney General's office.

Comm. v. AmCan Enterprises, Inc. et al.

On March 20, 1996, the Suffolk Superior Court held pursuant to the Commonwealth's Motion for Summary Judgment that the defendants, publishers of a business-to-business Yellow Pages, had used a deceptive solicitation in violation of chapter 93A. A hearing to assess damages, civil penalties, and attorney's fees was held on April 25, 1996. CPAD is awaiting a decision from the court on these issues.

Comm. v. Employment Network, Inc., Job Select, Inc. and James Rasch

On May 12, 1996, the Office filed a complaint in Suffolk Superior Court alleging that Employment Network, Inc., Job Select, Inc. and their principal, James Rasch, violated the Consumer Protection Act in connection with the offering of an employment information service. The complaint alleges that the defendants placed false and misleading newspaper advertisements regarding employment opportunities, made material misrepresentations about the services offered, and accepted payment for services without providing the promised services or making refunds to consumers.

In a consent judgment filed on May 17, 1996, the defendants are permanently enjoined from engaging in unfair or deceptive acts or practices in connection with the advertisement, sale and provision of employment information services. In addition, the defendants are required to pay restitution to consumers, civil penalties, and costs to the Commonwealth in the total amount of \$15,500.

Comm. v. Federal Record Service Corp.

On May 14, 1996, CPAD filed a complaint in Suffolk Superior Court, alleging that Federal Record Service Corp. violated the Consumer Protection Act by mailing deceptive solicitations offering services relating to the procurement of Social Security Numbers.

Comm. v. Michael Campbell, Lawrence Kreger, and Regina Bagdon, d/b/a Department of Employment Services

On June 14, 1996, CPAD obtained a temporary restraining order in Plymouth Superior Court against Thomas Campbell, Lawrence Kreger and Regina Bagdon, d/b/a Department of Employment Services, Department of Employment Services of Massachusetts, Employment Relief, and Employment Relief Department of Massachusetts. The defendants allegedly used deceptive names to pose as state agencies, and then charged consumers for so-called "free" at-home employment services. The temporary restraining order enjoined the defendants from advertising and accepting fees for job assistance services.

On June 24, 1996, the court entered a preliminary injunction enjoining the defendants on the same terms as in the temporary restraining order.

HEALTH AND MEDICAL ISSUES

Comm. v. Herbert Schurgin and Kenneth Eterian d/b/a Amesbury Vision Center

On August 22, 1995, CPAD filed an assurance of discontinuance in Suffolk Superior Court against Amesbury Vision Centers and its operators Herbert Schurgin, O.D. and Kenneth Eterian R.O.D. The defendants allegedly advertised a "two for one" deal without disclosing that a free pair of glasses was not available to consumers who purchased the initial pair through insurance.

The assurance prevents the defendants from advertising that they will provide two pairs of eyeglasses for the price of one without clearly and conspicuously disclosing material restrictions of the deal. The assurance also required the defendants to pay a \$750 penalty.

Comm. v. Telebrands Corporation and Ajit Khubani

On September 21, 1995, Massachusetts and 10 other states (Minnesota, Texas, Pennsylvania, Arizona, Illinois, Missouri, Wisconsin, Florida, Connecticut and California) filed suit against Telebrands Corporation and its president, Ajit J. Khubani, for selling a hearing aid without proper FDA approvals and for falsely advertising the product.

The Whisper XL had not been approved by the FDA as a hearing aid prior to its being sold to in the Commonwealth and advertisements claimed a wearer would be able to "hear a whisper up to 100 feet away."

Comm. v. U.S. Health, Inc., et al.

On October 10, 1995, a consent judgment was entered in Suffolk Superior Court resolving CPAD's contempt case against the corporations that operate the Holiday Health spas in Massachusetts. The contempt suit alleged that Holiday Committed civil contempt by violating the terms of a 1989 consent judgment.

The 1995 consent judgment provides for the payment of \$300,000 civil penalties, detailed injunctive relief aimed at future compliance with the health club services contract statute, and complete restitution through a program of arbitration for all injured consumers who had complaints on file with the Attorney General's Office at the time of entry of judgment and for all consumers who filed complaints within 60 days of the date of entry of judgment. More than 1,200 consumers are participating in program.

In the Matter of Merck & Co. and Medco Containment Services, Inc.

On October 25, 1995, Massachusetts and 16 other states entered into a multistate consumer protection settlement with Merck and Medco, two of the nation's largest health care companies. Merck, a large pharmaceutical company, acquired Medco, a large prescription benefit management

company, in November of 1993. Medco started to market Merck prescription drugs as preferred drugs without disclosing important information to prescribing physicians and consumers.

The settlement required the companies to pay \$115,000 in costs to each of the states and required Medco's pharmacists to make certain disclosure to consumers' physicians, such as the fact that he or she is calling on behalf of Medco and that the pharmacy is owned by Merck.

In the Matter of Community Outreach For Reconciliation and Empowerment, Inc. and Spectrum Addiction Services, Inc.

On March 29, 1996 an assurance of discontinuance was filed in Suffolk Superior Court requiring the payment of \$157,038 to the Commonwealth as reimbursement for non-reimbursable costs which Community Outreach for Reconciliation and Empowerment, Inc. ("CORE") had wrongfully claimed as operating costs. CORE allegedly misused public funds it received in connection with residential and non-residential services it provided to the Department of Youth Services and the Department of Social Services. The assurance further provides for injunctive-type relief relating to future compliance with regulations of the Division of Purchased Services.

Comm. v. Marjorie Phillips d/b/a New Discoveries

This case was CPAD's first consumer protection case involving the Internet. On April 2, 1996, CPAD brought a chapter 93A action and obtained a temporary restraining order against a woman for false and deceptive advertising on her World Wide Web "page." She claimed to have a cure for HIV and AIDS which she would divulge for a price. The case was resolved with a consent judgment, filed on April 25, 1996 which enjoined her from making misrepresentations in advertising a cure for HIV/AIDS.

HOUSING AND HOME IMPROVEMENT

Commonwealth v. Customized Structures Inc., James Dunlevy and Town & Country Modular Homes, Inc.

On August 9, 1995, CPAD filed a complaint in Suffolk Superior Court, alleging that James Dunlevy and his company, Town and Country, falsely induced customers into purchasing Customized Structures' modules as materials for the consumers' modular home construction. CPAD alleged Customized Structures was vicariously liable, and also that certain materials were defective. Customized Structures agreed to the entry of a consent judgment on November 30, 1995, agreeing to an injunction governing its business practices, and agreeing to pay consumers restitution and construction services valued at approximately \$60,000. Dunlevy and his company settled on February 1, 1996, agreeing to be banned from the industry for life, to be liable for \$168,000 in restitution and to pay a \$1,000 penalty.

Comm. v. John E. Bowen, d/b/a Bowen Construction Company and Peter Ingraldi aka Peter Bowen

On November 6, 1995, a consent judgment was filed in Suffolk Superior Court against John Bowen d/b/a Bowen Construction Company. Bowen allegedly misrepresented the value and nature of home improvements provided by Bowen to elderly consumers. Pursuant to the consent judgment, John Bowen agreed to perform 180 hours of community service and provide elderly consumers with consumer information bulletins.

Commonwealth v. Timothy Rich d/b/a Air Temp Engineering

On October 27, 1995, CPAD filed a complaint in Suffolk Superior Court against a chimney installer and repairman for failing to obtain licenses and permits required for installation and removal of home heating, cooling and ventilation systems. A temporary restraining order and a preliminary injunction were obtained prohibiting the defendant and his employees from engaging in home improvement work without first obtaining appropriate plumbing, heating and other permits.

Comm. v. Bird, Inc.

On December 12, 1995, the Division filed an assurance of discontinuance in Suffolk Superior Court, against Bird Roofing Company, Inc. of Norwood, Mass. It was alleged that: Bird manufactured shingles in the mid-1980's which were warranted to last twenty, twenty-five or thirty years, depending upon the shingle type; several years after installation, but before the warranty period expired, many of the shingles cracked and deteriorated prematurely; consumers who made claims against the company discovered that Bird's written warranty did not cover the cost of labor and materials required to repair or replace the shingles.

Bird agreed to pay consumers almost twice the amount provided under the terms of its express warranty to repair or replace defective shingles (the exact calculation of warranty coverage depends upon when the claim against Bird was filed, the type of shingle, length of the warranty period and whether the consumer is required to tear off existing shingles to make the repairs). Bird also agreed to expand its warranty protection to consumers who experience shingle cracking in the future. Over 100 consumers made claims; most received settlements which were increased by several hundred dollars. The total amount of restitution to date exceeds \$50,000, but the increased warranty payments mean that the benefit to consumers is continuing as claims are made.

Comm. v. William James Wareham d/b/a Paramount Roofing and Home Repair

In December, 1995, CPAD obtained a default judgment in Suffolk Superior Court against William James Wareham d/b/a Paramount Roofing and Home Repair. CPAD alleged that Wareham held himself out as a roofer without being licensed with the state, took deposits in amounts greater than permitted by Massachusetts law, and then in some cases, failed to perform any roofing work or to refund consumers' deposits in full.

The default judgment enjoins Wareham from the alleged activities and requires the payment of \$550 in restitution and \$10,000 in civil penalties.

Comm. v. Richard Kivel, et al.

In fiscal year 1995, CPAD filed a complaint and obtained a temporary restraining order against Richard Kivel, and the businesses he runs, including Advanced Security Technologies, Inc., American Home Investments, Inc. and American Home Products, from doing further business unless and until they obtain the required professional licenses and registrations from three State Boards.

The Commonwealth alleged that in addition to operating without the required licenses and registrations, Kivel engaged in a variety of unfair or deceptive acts or practices in the conduct of his businesses, including misrepresenting that he was an authorized dealer of certain brand products, encouraging elderly consumers to take out loans to purchase expensive products and services that cause the consumers to become indebted beyond their limited means and installing home security products in such a shoddy and unprofessional manner that they do not work as promised if at all.

On February 7, 1996, a consent judgment was entered wherein Kivel agreed to be banned for life from the home improvement business, to be liable for \$20,000 in restitution, and to be liable for \$15,000 in penalties. The consent judgment also bans co-defendant Joan Robinson for life, and required her to pay a \$1,500 penalty.

Comm. v. Kenneth J. Aborn, John B. Ristuccia, and Paul Swerling, d/b/a Better Home Concepts, Inc.

In June 1992, CPAD filed a complaint against the defendants for allegedly violating the Massachusetts Consumer Protection Act in the offering and sale of residential construction and home improvement services and the arrangement of financing in connection with those services.

In February, 1996, separate consent judgments were entered in Suffolk Superior Court against John Ristuccia, Paul Swerling and Kenneth Aborn providing that each shall be permanently barred from the home improvement contractor business in the Commonwealth.

Comm. v. Chatham Development Co., Inc.

On June 3, 1996, CPAD filed a complaint in Middlesex Superior Court against Chatham Development Co. Inc., alleging the company employed illegal lease provision in its leases for Woodland Park apartments, in Auburndale.

On June 26, 1996, CPAD obtained a preliminary injunction on the issue of landlord charging tenants \$25 for Constable Service of Notice to Quit when rent was as little as one day late. State law states that no penalty is due until the rent is 30 days or more overdue.

MOBILE HOMES

Little, et al. v. Northway Investment Properties, Inc (Green Meadows)

On March 8, 1996, CPAD intervened in a Suffolk Superior Court action in an attempt by a Receiver to close Green Meadows, a mobile home park in Peabody with 40 mobile homes and 110 residents. CPAD argued that the Receiver failed to comply with the Massachusetts mobile home statute.

CPAD moved to intervene in this receivership proceeding involving eleven businesses and related entities, and filed an objection to the receiver's motion to close a mobile home park located in Peabody, Massachusetts (Green Meadows Mobile Home Village) and evict all the residents summarily within 30 days. Many of the Park's 41 homes are owned by elderly residents; many are low-income. It was alleged that the action violated the Manufactured Housing Communities Act because the receiver did not give residents two years notice of intent to close the park nor did the receiver offer to pay the residents the fair market value of their homes as required by G.L. c. 140, § 32L (7A). Closure of the

Park on the terms proposed by the receiver would have resulted in an almost total loss of equity for the mobile homeowners in an amount in excess of \$800,000.

Several days of hearings were held, then suspended so that the parties could attempt to mediate the dispute. Mediation is ongoing.

Comm. v. Peabody Rent Control Board

In this action brought initially in Northeast Housing Court and transferred to Essex Superior Court, against nine mobile home parks and the Peabody Rent Control Board, CPAD concluded a three-day bench trial of its claim that eight parks violated c. 93A and the Manufactured Housing Act by issuing park discontinuance notices in bad faith. On the remainder of its complaint, the Commonwealth had previously won partial summary judgment invalidating the park discontinuance notices on other grounds and remanding the rent issues to the Peabody Rent Control Board for redetermination in accordance with applicable laws. To date, the Board has ordered rent decreases for two parks, held hearings on rents for four other parks, and is in the process of scheduling rent redetermination hearings for the remaining two parks.

Comm. v. Pine Hill Estates

In this action brought in Housing Court in Bristol County, against the owner and licensee of a 400-plus mobile home park with primarily elderly residents for violations of the Manufactured Housing Communities Act and violations of Chapter 93A, partial summary judgment was entered for the Commonwealth. The court awarded civil penalties in the amount of \$245,000, attorneys fees and restitution (in an as yet undetermined amount) for the owner's unfair practice of restricting the residents to one propane vendor and requiring residents to purchase the propane from that vendor through the park management at increased prices. The court found that the owner was charging a mark-up to consumers without providing any services.

Mobile Home Rules Reviews

CPAD established its mobile home task force for the purpose of conducting review of park rules and addressing inquiries and complaints from consumers, park owners, and state legislators. During the past year, the Task Force has reviewed and issued reviews of the rules of many mobile home parks, and responded to numerous inquiries and complaints from around the state. Pursuant to CPAD's statutory obligation under G.L. c. 140, § 32L (5), the Division responded to numerous sets of park rules, objecting to rules which we determine are unenforceable because they violate the Manufactured Housing Communities Act or are "unreasonable," as set forth in § 32L of that Act.

Massachusetts Manufactured Housing Commission

G.L. c. 6, § 108, establishes the Massachusetts Manufactured Housing Commission, a deliberative body of representatives of tenants, owners, the Legislature, Executive Office of Communities and Development, and the Attorney General's Office which considers legislative proposals and mediates complaints between consumers and park owners. The Attorney General's "designee" attended monthly meetings of this agency as an ex-officio member of the Commission and provided information and guidance to this newly formed commission in 1995-1996 as they adopted by-laws, a mission statement and procedures to handle complaints and conduct their business pursuant to G.L. c. 6, §108.

TICKET BROKERS

Comm. v. Robert Anthony Finnemore, d/b/a State Line Tickets

On May 2, 1996, CPAD filed a complaint in Hampden Superior Court against Robert Anthony Finnemore d/b/a State Line Tickets alleging unfair and deceptive acts or practices in connection with the offering for sale to the public concert tickets for two non-existent Pearl Jam concerts.

On May 14, 1996, a preliminary injunction was issued enjoining the defendant's allegedly illegal conduct.

TOBACCO

SKOAL/ U.S. Tobacco Sting

This sting was designed to see if U.S.T. employed sufficient safeguards to prevent minors from receiving free samples of their product through the use of mail-in coupons, found in many Massachusetts convenience stores. From the 30 coupons that were sent in, 22 minors received samples of smokeless tobacco from U.S.T. On October 5, 1995, U.S.T. entered into an assurance of discontinuance requiring them to obtain proof of identification (in the form of a photocopy of a driver's license which would be verified through a computer database) before they would send any free samples by mail. In addition, U.S.T. agreed to pay \$40,000 to the Attorney General's Local Consumer Aid Fund.

Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Liggett Group Inc. v. Scott Harshbarger, Attorney General

Five tobacco companies sued our office preemptively in federal court seeking a declaratory judgment on November 28, 1995. The Office filed a motion to dismiss that case, the outcome of which is still pending.

Comm. of Massachusetts v. Philip Morris, Inc., R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, B.A.T. Industries P.L.C., Lorillard Tobacco Company, Liggett Group, Inc., New England Wholesale Tobacco Co., Inc., Albert H. Notini & Sons, Inc., The Council for Tobacco Research -U.S.A., Inc., and The Tobacco Institute, Inc.

This case was filed on December 19, 1995, in Middlesex Superior Court. In the case, the Commonwealth alleges that, through a concerted effort, the defendant cigarette companies have misled the public about the health effects and addictive nature of tobacco products. On January 3, 1996, the defendants removed the case to Federal Court, and the Office moved to remand the case back to Middlesex Superior Court. After extensive briefing and oral argument by both sides, the Motion for Remand was granted in the Commonwealth's favor and the case was remanded back to Middlesex

Superior Court. Meanwhile, the Office has moved to have the federal Declaratory Judgment action dismissed.

On March 15, 1996, the Office and the Attorneys General of four other states (Mississippi, Florida, West Virginia and Louisiana) entered into a settlement with defendant Liggett Group, Inc. (and various related entities). The settlement includes monetary payments to Massachusetts (\$200,000 up front); Liggett's agreement to withdraw its opposition to the proposed FDA rule restricting tobacco industry marketing to children and to withdraw its related opposition to FDA's assertion of jurisdiction over cigarettes; various limitations on Liggett's future marketing to children; Liggett's agreement to cooperate in AG litigation against the rest of the tobacco industry; and obligations which would apply to any Future Affiliate (large tobacco company) with which Liggett joins.

TRAVEL

Comm. v. Journeys on Dialysis, Inc. and George Muir d/b/a Journeys on Dialysis.

This case, filed in Norfolk Superior Court on July 14, 1995, involves a suit against a Cohasset travel agency and its principal for allegedly luring kidney failure patients by false offers of vacation cruises made possible by dialysis treatments aboard ship. The complaint alleges that the defendants violated the Consumer Protection Act by accepting money for vacation cruises and on-board dialysis treatment from consumers and then failing to provide either the travel accommodations or refunds. The complaint seeks injunctive relief, restitution to injured consumers and civil penalties. The court issued a temporary restraining order and subsequently, a preliminary injunction, prohibiting Journeys on Dialysis and Muir from accepting further payments for travel arrangement services.

Commonwealth v. Anthony Belli d/b/a Centennial Travel and Tony's Casino Tours

In September 11, 1995 CPAD obtained a permanent injunction against a tour operator prohibiting him from accepting funds from consumers and then failing to make transportation and hotel arrangements, and from failing to provide refunds to consumers. The injunction requires the defendant

to disclose financial resources and provide the Commonwealth with tax returns and a financial statement for a period of three years to determine if he is able to pay more than \$40,000 in restitution and civil penalties.

Comm. v. Resort Properties, Inc. d/b/a New Horizons of Wilmington, et al.

On January 30, 1996, CPAD filed a complaint in Suffolk Superior Court alleging that Resort Properties, Inc., of Milford, Connecticut, violated the Massachusetts Consumer Protection Act by using deceptive solicitations to lure consumers to attend sales presentations at its showroom in Massachusetts. The company was doing business in Massachusetts as "New Horizons of Wilmington". The complaint also alleges that the company, as part of its high-pressure sales presentations, made false or misleading statements to induce consumers to purchase vacation club memberships costing thousands of dollars.

The suit also alleges that Great American Records, doing business as G.A.R. Financial, engaged in unfair debt collection activities. G.A.R. Financial, an affiliated company, financed many of the sales transactions.

UNAUTHORIZED PRACTICE

Comm. v. Joe Chatelain

On November 3, 1995, CPAD filed a complaint in Middlesex Superior Court, alleging that defendant Joe Chatelain was falsely holding himself out as an attorney; engaging in the unauthorized practice of immigration law; and filing false and fraudulent petitions with the Immigration and Naturalization Service without the knowledge or consent of the persons he supposedly represented. Default judgment was entered against the defendant on February 12, 1996, enjoining the defendant from engaging in unauthorized practice of law and requiring the payment of \$6,900 in restitution to consumers, \$5,000 in civil penalties and \$100 in costs.

Comm. v. John F. Kennedy d/b/a J.F.K. TV Repair

On May 8, 1996, a complaint was filed in Suffolk Superior Court against John F. Kennedy d/b/a J.F.K. TV Repair. A Preliminary Injunction Order was granted May 30, 1996. The Attorney General alleges that defendant Kennedy, a TV repair technician doing business in Roslindale, violated the Massachusetts Consumer Protection Act by engaging in the business of television and radio repair after his license had been revoked by the state board of registration; charging consumers for repairs which had not been authorized by the customer; and refusing to return customers' televisions and radios.

Commonwealth v. Fredy Pellecer

On May 14, 1996, CPAD filed a civil action in Suffolk Superior Court against Fredy Pellecer, an East Boston man who allegedly misled immigrants seeking work permits and legal status to believe he was an immigration lawyer. A TRO and preliminary injunction were obtained prohibiting the defendant from engaging in the practice of law, representing that he is competent or qualified to practice law and from giving legal advice on immigration matters.

OTHER INITIATIVES

NAAG Consumer Education Fund Grant and Courses at the Madison Park Technical Vocational High School

During this past school year, CPAD AAG's taught two consumer law classes per month at the Madison Park High School in Roxbury. The course covered the following topics: 1. Overview of the Attorney General's Office and Consumer Protection Division; 2. False and Misleading Advertising; 3. Massachusetts Used Car Laws; 4. Credit and Credit Cards; 5. Telemarketing Scams and Sweepstakes; 6. Landlord/Tenant issues; 7. Buyer's rights; and 8. Consumer Mock trial.

The program produced a videotape on used car laws, and, along with the students, produced a brochure for high school students on consumer rights. These brochures were distributed to students at the Madison Park High School.

The Attorney General's HMO Community Benefits Guidelines

The Attorney General, in conjunction with health maintenance organizations in Massachusetts, released Community Benefits Guidelines that encourage HMOs to continue and to develop formal programs that promote preventive care and improve the health status and quality of life of the hundreds of thousands of citizens of the communities they serve, including the health care needs of unserved or underinsured citizens throughout Massachusetts.

The voluntary guidelines, believed to be the first such effort in the United States, were developed in cooperation with the Massachusetts Association of HMOs ("MAHMO"), the state's largest health insurer Blue Cross and Blue Shield of Massachusetts, and community health care advocates.

The guidelines are designed to be adopted and implemented by all HMOs, working with the communities they serve. For HMOs with community benefits programs, the guidelines serve to encourage their continued public commitment to disadvantaged patients, particularly the working poor, poor children, victims of domestic violence, elderly with low- or moderate-incomes, minorities, and the disabled. The guidelines also encourage HMOs that are part of an integrated health care system to develop a community benefits program in collaboration with system partners.

Attorney General's Manufactured Housing Regulations

In December, 1995, CPAD chaired hearings on proposed manufactured housing regulations. The regulations are intended to address consumer protection issues involving terms and conditions of occupancy, the promulgation of community rules by manufactured housing community owners, the provision of goods and services within manufactured housing communities, the purchase and sale of

manufactured housing within these communities, the termination of tenancies and eviction, the sale or lease of entire manufactured housing communities by the owners of those communities, and other related issues.

Over 800 sets of written comments were submitted on the proposed regulations and 300-400 individuals attended the hearings. It is expected that the final regulations will be promulgated in August, 1996.

Attorney General's Travel Regulations

In April, 1996 the Office issued a set of regulations to deal with common problems in the purchase of travel services. The regulations emphasize complete, accurate, prior disclosure of information about travel services offered for sale; give the consumer significant rights to cancel or receive a refund; and draw clear lines of accountability for travel plans that fall through, because of some failure on the part of the seller of travel services. The regulations are found at 940 CMR 15.00 et seq.

Attorney General Harshbarger's Consumer University

Approximately 1,000 elder consumers from across the Commonwealth attended three "Consumer University" conferences in May, 1996. The conferences, held in conjunction with national Older Americans Month featured seminars on knowing your consumer rights, health care, and elder protection issues. Speakers included Assistant Attorneys General from the Public Protection Bureau, Regulated Industries Division, Elder Protection Project, Western Massachusetts Office, local police departments and the American Association of Retired Persons.

LOCAL CONSUMER AID PROGRAMS

The Local Consumer Aid Programs, along with the Face-to-Face Mediation Services, are responsible for the administration of the Local Consumer Aid Fund (LCAF). The LCAF supports the state-wide network of nineteen Local Consumer Programs and eight Face-to-Face Mediation Programs

through annual grants for the resolution of consumer problems. The Local Consumer Program Coordinator provides continuing training and technical assistance to grant recipients. The LCPs, working in cooperation with the Office of the Attorney General, resolve thousands of complaints each year, and also identify patterns of unfair and deceptive acts and practices in the marketplace.

Funding for the local programs is allocated by the General Court pursuant to G.L. c. 12 § 11G. For fiscal year 1996, \$598,499 was appropriated by the legislature to the LCAF. Ten percent of that figure (\$59,849) was retained by the Office of the Attorney General for administrative purposes. An additional sum, which was earmarked for the LCAF from settlements of consumer cases, was used to supplement the legislative appropriation, for total costs of running the programs in 1996 of \$913,050.

In the first six months of 1996, the nineteen local consumer programs handled approximately 6,000 written consumer complaints, recovering over \$1,500,000 for consumers in the Commonwealth. The percentage of written complaints resolved is nearly 80%.

In addition to its consumer complaint resolutions, the Mediation Services program had continued to implement its school-based mediation project, Student Conflict Resolution Experts (SCORE).

CONSUMER COMPLAINT AND INFORMATION SECTION

The Attorney General's Consumer Complaint and Information Section (CCIS) provides services to individual consumers by responding to thousands of requests for information on consumer issues and referrals on the Attorney General's consumer "hotline"; through a voluntary mediation program resolving consumer complaints against merchants and businesses which recovers refunds and other savings for individual consumers; by educating the public through developing and distributing educational materials and by participating in community consumer education initiatives; by responding to public records requests; and identifying potential trends of unfair or deceptive trade practices for further investigation or possible prosecution by the Consumer Protection and Antitrust Division.

For the period July 1, 1995, through June 31, 1996, **CCIS received and responded to 18,300 complaints or other correspondence; responded to 126,356 telephone calls to the Attorney General's consumer hotline; and mediated 2,644 consumer complaints recovering \$459,637 in refunds or other value to consumers.**

CCIS' major initiative over fiscal year 1996 is the development and implementation of the computer tracking system, the Consumer Complaint Tracking System ("CCTS"). CCTS is currently used to capture consumer and merchant information received on the hotline. The system automatically generates a complaint form and a cover letter once the consumer's identifying information is entered. The computer generated forms are time saving, and list a specific complaint number which is used in the future to access the consumer's information. In addition, CCTS allows the user to access information more efficiently by listing federal and state agencies and local consumer program phone numbers, as well as the status of cases. Also, in responding to public records requests, information on the number of complaints filed against a particular merchant with a breakdown by location can be very quickly accessed.

CCTS allows the Complaint Section to respond more efficiently to consumer inquiries on the hotline; allows staff to quickly enter consumer or merchant data; enables staff to quickly and easily retrieve complaint records filed against a particular business; allows staff to research complaints involving particular industries to identify patterns or trends of unfair or deceptive practices. CCTS will be installed in the nineteen (19) local consumer programs. Once the local consumer programs are linked, data from the individual programs will be downloaded directly to the Attorney General's database on a daily basis, thereby insuring the integrity of the information provided to the public and the press concerning the number of complaints on file against a particular business.

As of February, 1996, complaint forms and correspondence are scanned into the database, so that the actual image of the complaint appears on the computer screen. Therefore, when responding to public records requests for copies of consumer complaints, the scanned complaint is retrieved and the consumer's identifying information is redacted on the screen. This process greatly reduces the response time for such requests. The consumer educational brochures and materials distributed to the public will also be scanned into the database for use on the hotline in answering inquiries.

As of March, 1996, significant progress was made in implementing additional functions and screens of the tracking system. Staff now record mediation notes and actions on the *Status and Event Information screen*; staff utilize the *Bulletin Board screen* on the hotline to search and view referral information by entering key words; the *Case Information screen* is being implemented which provides litigation/investigation information and links complaints to a particular case; *press releases* are electronically transmitted from the Press Office and are read when staff log on to the system; and the *Look Up Complaint screen* is used to determine the number of complaints, business and complaint type, mediation location, and the disposition of the complaints against a particular business.

Investigators and other Public Protection Bureau staff were trained and CCTS installed on their computers to facilitate wider use of the tracking system and to support investigations and

litigation. *Management Reports* which track complaint data for a specific period of time (monthly, quarterly, etc.) are now run from CCTS. The reports are comprehensive and contain information, such as the number of referrals to local consumer programs and state or federal agencies, the number of complaints by business and complaint type, the total amount of complaints mediated and money recovered for consumers, and the three merchants with the highest number of complaints.

In addition to operating the hotline, mediating complaints and implementing the computer tracking system project, the Section provided intensive support to the Freedom House local consumer program located in Roxbury. Freedom House experienced significant staffing and management difficulties which resulted in the transfer of open and backlogged complaints to the Section. In addition to maintaining their own caseloads, staff trained and supported new Freedom House staff members, and mediated 237 Freedom House consumer complaints recovering \$20, 856 for consumers living in the inner city.

The Section focused on consumer education initiatives; in cooperation with the MBTA and Fleet Center, in recognition of National Consumers Week, staff distributed consumer educational materials and complaint forms and answered questions at the Fleet Center; staff attended the MA Council on Aging conference and distributed education material and complaint forms to elder care providers; following the Marston Mills factory fire in Lawrence, staff participated in a community aid initiative; and staff participated in the Attorney General's Consumer University programs providing complaint forms, education materials and answering the questions of senior citizens. The Section increased the number of interns participating in the undergraduate mediation internship program. Due to the increase, the complaint assignment process was expedited, thereby decreasing the waiting period for consumers. Lastly, CCIS staff continued to participate in the following Bureau and Office-wide

initiatives: the Internet working group, NAAG telemarketing group, and the SJR Racial and Ethnic Bias Committee.

MEDIATION SERVICES DEPARTMENT

The OAG Mediation Services Department consists of 6 staff members: Director, Deputy Director, Administrative Assistant and 3 Regional Coordinators. The three Regional Coordinators provide coverage to SCORE and Face to Face Mediation Programs in the Northeast, Central & Boston and Western MA regions. The Southeast region is not served by a Regional Coordinator at this time so coverage for these programs is provided by the Director and Deputy Director.

There are three major components to the work of the OAG Mediation Services Department (MSD), **Face to Face Mediation Programs (FTFMP)**, **SCORE** (Student Conflict Resolution Experts) and the **Conflict Intervention Team (CIT)**.

Face to Face Mediation Programs

Face to Face Mediation Programs were created by the OAG to provide consumers and tenants with face-to-face mediation services to resolve consumer/merchant and landlord/tenant complaints. The FTFMP was initiated in 1984 by the OAG with 3 pilot programs in Worcester, Haverhill and Somerville. There are now 8 Face to Face Mediation Programs serving citizens in **Worcester, Haverhill, Somerville, Brockton, Hyannis, Fitchburg, Springfield and Lowell**. During FY 96, with the assistance of trained volunteer community mediators these programs conducted 1,755 mediations with 74% of these disputes reaching a mediated resolution. Face to Face Mediation Programs receive referrals from local consumer programs, local courts, police and other community agencies.

OAG Face to Face Mediation Programs are part of a statewide network of 30 community mediation programs. These community based programs require volunteer mediators to undergo 30 hours of basic mediation skills training. Upon successful completion of basic mediation training, community mediators volunteer their time and their mediation skills to help serve their community.

Face to Face Mediation Programs receive technical support, consultation, and training assistance from MSD. In addition to program quality control services, MSD also administers the FTFMP grants, evaluates program performance and collects program statistics and financial reports.

Student Conflict Resolution Experts

SCORE is a comprehensive peer mediation program that forges a partnership between educators and mediators to establish quality student-centered mediation programs in schools. Since SCORE's inception in 1990, it has implemented 35 peer mediation programs in schools across Massachusetts. Eight new SCORE programs in *Holyoke, Amherst, Plymouth, Wakefield and Springfield* were implemented in FY 96 bringing the total number of SCORE programs to 27 schools in 18 communities throughout Massachusetts. From September 1995 through June 1996, SCORE programs mediated 2,004 peer disputes with 97% reaching a mediated resolution.

SCORE funds a program model that requires a full or part-time adult SCORE coordinator in the school. The SCORE coordinator is hired and supervised by the SCORE grant recipient (a local community mediation program). SCORE mediators are recruited from the student body and undergo an intensive 20 hr. SCORE peer mediation training to prepare them to serve as a peer mediator at their school. In SCORE programs, the student mediators conduct the majority of mediations with support and guidance from the SCORE coordinator.

The Conflict Intervention Team (CIT)

The CIT is a team of experienced community mediators ready to mobilize at a moments notice and respond to a school in crisis or on the verge of crisis. Last year, schools in *Granby, Lynn and Pittsfield* requested mediation intervention from the Conflict Intervention Team. CIT also provided technical assistance to 1 school in Manchester, NH and conducted assessments for schools in *Marblehead, Fuchburg and Holyoke*. In each school, CIT was faced with tense situations that were based in the intolerance of differences and threatened to build to crisis proportions. CIT mediators

facilitated small and large group discussions to ease tensions and conducted 10 mediations with 100% reaching a mediated agreement. Five MSD staff members and 16 CIT mediators served on CIT in FY 96.

Annual Site Visits

SCORE conducts an Annual Site Visit/Program Evaluation for each SCORE program. These site visits provide MSD with an opportunity to evaluate individual program performance, generate improvements, troubleshoot problems and determine program priorities for the new school year. MSD incorporates the information gained from these visits into strategic program planning for the new school year. During academic 95'-96' MSD staff conducted 27 site visits and met with school principals, disciplinarians, student mediators, score coordinators and community program directors.

95'-96' Trainings

Last year MSD conducted 13 SCORE trainings and trained 301 student mediators for the following SCORE schools:

Springfield: Central High School, Putnam Voc.Tech. High School

Lynn: Lynn Classical High School

Haverhill: Haverhill High School

Holyoke: Holyoke High School

Amherst: Amherst Regional Jr. High School

Plymouth: Plymouth Community Intermediate School, Plymouth
North High School and Plymouth South High School

Wakefield: NE Metro Technical High School

Boston: Boston English High School, Curley Middle School
Cleveland Middle School

SCORE peer mediation trainings are high energy, experiential, intensive and interactive learning events. Trainings last 18-20 hours and are conducted by experienced mediation trainers and school mediators. The heart and soul of a SCORE training is the mediation role-play. SCORE believes that giving students an opportunity to learn and practice mediation skills in a role-play setting is the most effective way to teach mediation skills and help student mediators to develop confidence in their new abilities.

Program Support Activities

In addition to annual site visits and program evaluations, MSD provides mediation experience, technical support, case review and training assistance to the FTFMP, SCORE and CIT programs. The on-going support services provided by MSD Regional Coordinators maintains the high quality of training for new mediators and preserves the integrity of the Mediation practiced in these programs.

Regional Coordinator Reports

For a more detailed report of program activities by region, please refer to the attached Regional Annual Report. These reports were written by MSD Regional Coordinators, Sandra Washburn (Northeast), Jill Roberts (Western MA) and Susie Wong (Central & Boston).

Innovations

In 1994 OAG won a prestigious national award from the Ford Foundation for its SCORE and CIT programs. The \$100,000 award was given following a national competition to seek creative programs which provide valuable services to the public. The \$100,000 award is used to *disseminate information nationally about SCORE and CIT and, to encourage replication of these programs by other Attorneys General and State Departments of Education*. During FY 96, MSD responded to over 100 requests for information and mailed out 73 in-state and 40 out-of-state SCORE and CIT information packets.

Kathleen Grant, Director of MSD, visited AG offices in Louisiana, New York and South Carolina to provide orientation workshops to the SCORE program. This fall, MSD will return to Louisiana to provide SCORE replication training. Last April, at the request of the Indiana AG's Office, Kathleen Grant and Darlene Skog, MSD Deputy Director, traveled to Fort Wayne, Indiana to provide advanced mediation training and technical assistance to the 6 middle and high schools in Fort Wayne. An intensive 2 1/2 day advanced mediation skills training was provided to Fort Wayne peer mediation coordinators, local community mediators and school administrators.

MSD consulted with states interested in replicating SCORE and/or CIT in North Carolina, Nevada and Arizona. As a result of these consultations, Kathleen Grant will be traveling to Arizona this fall to provide a SCORE orientation workshop and to North Carolina to deliver a CIT replication training.

Community Outreach Projects

Community outreach projects in FY 96 brought MSD staff to communities in Lynn and Boston. In *Lynn*, Kathleen Grant and Susie Wong, MSD Regional Coordinator worked with the Lynn Youth Violence Prevention Collaborative and provided mediation consultation to ease mounting tensions among members of feuding Asian and Hispanic gang-involved youth. As a result of these efforts, the tensions between the two groups have moderated. In *Boston*, Kathleen Grant, working in collaboration with other trainers, designed an innovative 5 day mediation skills training to teach street workers in the Boston Street Smarts program how to use mediation skills to prevent and deter youth violence on the streets.

MSD also joined a Prejudice-Based Violence Reduction Working Group sponsored by the Dept. of Justice. Working group members include federal and state agencies and local community organizations working to reduce prejudice-based violence. The working group's primary purpose is to produce and disseminate a comprehensive resource book.

Public Events, Presentations, Workshops

During the year, MSD staff participated in 7 public events and represented the OAG in *Holyoke* at a legislative breakfast, in *Worcester* at a Race Relations Roundtable, at graduation ceremonies for volunteer mediators in *Hyannis* and peer mediators in *Grafton*, in *Malden* on cable television, at a statewide peer helpers conference in *Framingham* and in *Boston* at a celebratory dinner for UMass Certificate Program in Dispute Resolution graduates. In addition to these public events, 3 presentations on MSD mediation programs were given by staff at Suffolk Law School, Dept. of Justice Prejudice-based Violence Reduction Working Group and the OAG complaint section.

MSD staff conducted 21 mediation skill-building workshops at the following conferences: OAG's, "SCORE", "Civil Rights in our Schools" and "Juvenile Police Officers Training", "Essex DA's", "Hate Crimes", "Society for Professionals in Dispute Resolution", "Mass. Assoc. Mediation Programs and Practitioners", "National Assoc. for Mediation in Education", "Mass. Non-Profit Housing Assoc.", and "Mass. Continuing Legal Education" "Mediation in the Global Village". Mediation skill building workshops were also conducted at Regis College, UMass and Harvard University by MSD staff.

In FY 96, the Attorney General visited SCORE and peer mediation programs in Springfield twice and the SCORE program in Lowell once. MSD staff helped to coordinate each visit by the Attorney General.

Troubleshooting: Existing SCORE Programs

In FY 96, MSD was faced with an unprecedented number of serious and complex issues which presented challenges to existing SCORE programs in Springfield, Taunton, Dartmouth, Lynn, Fitchburg and Medford. In each case, MSD's response was to conduct a carefully planned and orchestrated mediation intervention. MSD's goal was to resolve these issues without compromising the guiding principles of the SCORE program or the OAG's commitment to preventing violence in our schools.

Springfield

Darlene Skog, with assistance from Jill Roberts (Western MA Regional Coordinator), facilitated a series of on-going meetings with Springfield School Dept.(SSD) staff and New North Citizen's Council (NNCC), the SCORE grant recipient, to find a mutually agreeable resolution to the problems created by the hiring of two Mediation Teachers for schools in Springfield already served by SCORE programs. Since the primary responsibilities of the Mediation Teacher exactly duplicated that of the SCORE Coordinator, MSD took preventative action and initiated a dialogue with SSD and NNCC to solve the problems created by the Mediation Teachers' hiring.

Throughout the series of meetings, discussions and negotiations held in Springfield, MSD's goals were 1) to prevent negative impact to the existing SCORE programs, 2) to design a plan that would support a cooperative working relationship in the schools, and 3) to keep the lines of communication open so that all parties could work together in the best interests of the students.

After several rounds of meetings and discussions with SSD and NNCC and a meeting with Springfield superintendent, Dr. Peter Negroni, a proposal was drafted by SSD and NNCC for MSD review. The joint proposal adopted each suggestion offered by MSD during the series of meetings. A draft of this proposal for the upcoming 96'-97' school year is now under review by MSD.

Although we were pleased at the progress made on this issue, we fully anticipate that the upcoming 96'-97' school year in Springfield will at best be a difficult and trying one for SCORE.

Taunton and Dartmouth

Last winter, with no forewarning, Taunton and Dartmouth High Schools requested that SCORE grants for the 96'- 97' school year be given directly to the schools instead of ComCare, the SCORE grant recipient. Both schools argued that they no longer needed supervision from ComCare, that they had the capacity to administer the SCORE grant and that their administration of the SCORE grant would save money.

Kathleen Grant and Darlene Skog met individually with the schools to learn more about the basis for their request. At these meetings, we heard from each school about their discomfort with the level of administrative costs, the salary schedule of the score coordinator and their diminished need for ComCare's program supervision. After carefully listening to their concerns, we encouraged each school to consider a range of possible solutions. We shared our past experiences with the model they were proposing and described the difficulties we encountered in applying that model. We also learned during these meetings that neither school had brought these concerns to ComCare's attention and that ComCare was unaware of their request to us. We strongly urged each school to immediately communicate their concerns to ComCare and they agreed to do so.

Once the schools had communicated their concerns to ComCare, we met with ComCare to review the school's issues and hear ComCare's point of view. During the meeting with ComCare, we encouraged them to prepare carefully for these potentially difficult meetings.

As a result our efforts to stimulate communication on the local level, all parties took part in a constructive dialogue that helped them to resolve each other's concerns. In the end, both of the schools agreed to continue their working relationship and ComCare agreed make necessary adjustments to budget and supervision plans. We plan to carefully monitor the situation throughout the 96'-97' school year to ensure no new difficulties arise.

Medford

During the annual site visit with Principal Tadaró and Superintendent Bellson, Sandra Washburn, MSD Regional Coordinator, and Alice Comack, Director of Somerville Mediation Program (SMP), the SCORE grant recipient, were informed that there would be no school funding for the SCORE program at Medford HS in the new school year. Sandra and Alice responded to this troubling news by discussing with the principal and superintendent the impact to the school of not funding the SCORE program and further explained that the SCORE grant program required matching funds.

Over the summer, after many discussions with Sandra Washburn and Alice Comack, the school under pressure from the minority community, finally agreed to keep SCORE at Medford HS but did not offer matching funds. Acting independently of SMP (the hiring authority), the school decided to staff SCORE with a minority guidance counselor who lost her job at the school due to budget cuts. The school perceived this as a way to solve their budget problems and meet the requirement for the SCORE grant. Recognizing that school's action had put further strain on its working relationship with SMP, Sandra intervened and contacted the principal to discuss the situation and our concerns about changing the SCORE model. Sandra let the principal know we felt strongly that SMP needed to stay involved in Medford HS to ensure the continued success of the SCORE program.

After much prompting and behind the scenes facilitation by Sandra and Alice, the school and SMP are discussing budget and staffing concerns. The end result of all of these efforts is as yet to be determined.

Lynn

This spring, Nick Kostan, the principal at Lynn Classical HS, contacted MSD to express his growing concerns about the Lynn Youth Resource Bureau (LYRB), the SCORE grant recipient. Principal Kostan felt that LYRB provided minimal support to the score coordinator, used too much of the grant money for unnecessary administrative expenses, and paid the score coordinator too little.

Much like the behind the scenes work done in Taunton and Dartmouth, Sandra Washburn and Kathleen Grant worked to lay a groundwork to support and improve communications between the school principal and LYRB. They facilitated meetings and conducted follow-up discussions with the school and LYRB. As a result of these efforts, the school and LYRB have worked out their differences and will continue with their working relationship at least for the 96'-97' school year. MSD intends to carefully monitor this situation throughout the new school year.

Füchburg

Near the end of the school year, Susie Wong, MSD Regional Coordinator, was informed by North Central Court Services (NCCS), (the SCORE grant recipient) that it had restructured the salary schedule for the score coordinator position for the 96'-97' school year. NCCS also alerted Susie that they expected the new salary range to be unsatisfactory to the existing score coordinator.

Over the summer, the principal learned of the salary issue and offered to find additional school funds to resolve the salary dispute because he wanted the score coordinator to return. MSD was informed that the principal expected to add non-SCORE duties to the score coordinator's work and was asked to comment. Susie advised NCCS that we were not likely to support this alteration of the SCORE model due to our past negative experiences with this change in the model.

MSD has been monitoring the parties' discussions throughout the summer and working behind the scenes to stimulate communication and problem-solving on the local level. At this point, it looks as if the parties are about to finalize their discussions. MSD plans to continue to monitor this situation and respond as necessary.

Comments

One powerful lesson we have learned from our experiences this year is that program maturity brings with it new demands for independence. As the SCORE programs mature, the needs of the schools and the score coordinators change and evolve. To effectively manage these natural changes and advancements, adjustments on the part of MSD as well as the SCORE grant recipients, are and will be necessary to maintain quality student-centered SCORE programs in the schools.

MSD held 2 half-day meetings with the CMP's (SCORE grant recipients) to share our perspective on the changing needs of mature SCORE programs. MSD wanted to encourage the CMP's to prepare to face similar challenges. Both of the meetings with the CMP's were successful. The

CMP's left these meetings with a new and deeper understanding of the responsibility they have to help sustain a strong partnership with the schools.

Following these meetings, MSD initiated the several administrative improvements to the SCORE program for the 96'-97' school year. The improvements included 1) a redesign of the format for SCORE Letter of Intent, 2) a revised budget form, 3) submission of a detailed supervision plan and, 4) a requirement that individual schools review and sign off the SCORE Letter of Intent.

Troubleshooting: New SCORE Programs

Amherst

At Amherst Regional Jr High School, we were faced with the challenge of implementing a SCORE program in a school that had a teacher-run peer mediation program prior to SCORE. Throughout the year, Jill Roberts, Western MA Regional Coordinator and the CMP (Hampshire Youth 2000) worked to integrate the SCORE program into the school. The school subtly resisted the efforts to integrate the SCORE program into their existing peer program. In May, the CMP was informed by the school that they would not continue with SCORE next year. The official reason given was a lack of matching funds (the CMP had provided the bulk of the match in the first year). The school indicated that it would continue with the teacher-based peer program that was in place prior to SCORE.

Although the school offered funding as the reason for withdrawing from SCORE, we suspect that the school's commitment to a teacher run, adult-centered peer program was preferred over SCORE's student-centered model.

Plymouth

Following a successful CIT in the spring of 95' at Plymouth South High School, SCORE agreed to fund a pilot "**circuit rider**" model for three Plymouth schools: 2 high schools and 1 middle school. In this model, each of the 3 schools would provide an in-house staff person to coordinate SCORE. The CMP Director, Jean Fawcett of Community Mediation Services, would train each score

coordinator and follow a rotating schedule to start-up a SCORE program at each school. Since MSD has no Regional Coordinator for the Southeastern area, Darlene Skog worked with the CMP in the 3 Plymouth schools.

In this pilot model, after one SCORE program was up and running, the CMP would advance to the next school and repeat the program start-up cycle. Throughout all stages of program development, the score coordinators would receive on-going program supervision from the CMP, a former SCORE coordinator.

In September, Plymouth South High School (PSHS) was the first school to start-up a SCORE program. The school psychologist was selected to be the in-house score coordinator. In February, Plymouth North High School (PNHS) started its SCORE program with a school counselor serving as the temporary score coordinator. In April, Plymouth Community Intermediate School (PCIS) started its SCORE program with two school counselors coordinating the program.

In each of the 3 schools, the CMP encountered delays in program implementation. As a result of the delays, the CMP did not have enough time to introduce the SCORE program to each school and build inside support for peer mediation. Continual interference by the school liaison, combined with her unwillingness to allow the CMP to work within the schools as contracted, created many start-up problems for the CMP. To overcome these delays and obstacles in SCORE program start-up, the CMP had to meet with the school liaison and re-negotiate the program start-up and training cycles for each school.

Once the first phase of program start-up was completed, we had high hopes that things would begin to normalize and run more smoothly in each school. Unfortunately, we encountered further problems and difficulties. In PSHS, the CMP faced strong resistance to on-going program supervision, in PNHS, the school did not provide a score coordinator (a temporary coordinator was eventually found) and in PCIS, we were faced with a resistant principal. All of our efforts to address these

problems on a school by school basis were unproductive. As a last resort, we sought the assistance of the school liaison. Instead of using her influence to help us resolve these problems, she argued against the importance of following the SCORE program guidelines and reinforced the poor mediation practices and policies that we were seeking to improve.

Due to the roadblocks that we encountered at each turn in Plymouth, we were never quite sure that the Plymouth schools wanted SCORE - notwithstanding the school liaison's comments to the contrary. In June, Darlene conducted annual site visits at all three schools meeting with the principals, the in-house coordinators, the CMP and the school liaison, Mary Connolly. While the principals and the in-house coordinators (who had complained from the outset about their heavy work-loads) seemed to be satisfied with the slow pace and progress of SCORE, Darlene learned that the CMP and the school liaison did not want to continue their relationship into the new school year. The school liaison informed Darlene that she was not certain of her commitment to a SCORE program, that she believed that she could provide peer mediation training herself and that she was not at all certain that she could provide the required matching funds, assuming she decided to stay with SCORE. MSD learned over the summer that the school liaison decided to withdraw from SCORE.

We learned a some important lessons from our experiences in Amherst and Plymouth. First and foremost, the school must want SCORE and be willing to accept the program model for it to be successful. Secondly, we feel even more certain about the inherent wisdom in resisting substitutions of in-school staff for the outside score coordinator. After many sincere but failed attempts to make this substitution work to our satisfaction, we feel the case has been proven against further experiments of this nature. As we have witnessed time and time again, there is no substitute for the outside SCORE Coordinator who really believes in quality peer mediation.

PUBLIC CHARITIES DIVISION

The Attorney General represents the public interest in the proper solicitation and use of charitable funds and is authorized to "enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof." G.L. c.12, sec. 8. The Division of Public Charities was established to carry out the Attorney General's responsibilities in this area.

More than 35,178 charities are registered with the Division, as well as 213 fundraisers presently operating on behalf of charities in Massachusetts. A public charity is one which is non-profit, whose purpose is charitable and which benefits a portion of the public; in addition to philanthropic organizations, examples of public charities include nonprofit hospitals, schools, social service providers, and cultural organizations. As well as registering and obtaining financial reporting by charities and fundraisers, the Attorney General is the defendant in all proceedings brought in the Supreme Judicial Court to wind up the affairs of a public charity.

Beyond enforcement of laws requiring annual reporting by public charities operating in the Commonwealth, the Division focused its activities during the last fiscal year in three primary areas: enforcement litigation to address deception and fraud in charitable fundraising; estate and trust actions to ensure charitable trust funds are appropriately administered and applied; and corporate governance and oversight initiatives to ensure charitable governing boards are carrying out their fiduciary duties of due care and loyalty.

Recognizing that charities provide vital services in our communities, enjoy certain benefits due to their tax-exempt status, and assume certain obligations as a result of these benefits, the Division has been involved in a number of initiatives over the past year intended to strengthen the charitable sector at large. These efforts have included the Division's annual report on charitable fundraising, published during the Fall giving season; the Attorney General's Fourth Annual Conference for Board

Members, which was held in April and attended by over 408 volunteer directors and others; and establishment of procedures for review of proposed acquisitions of nonprofit health care providers by for-profit companies.

SOLICITATION OF CHARITABLE FUNDS

The Attorney General takes affirmative legal action against charities and professional fundraisers for unfair or deceptive solicitation practices and to enforce their fiduciary duties with respect to funds raised. In addition to injunctive relief, he may seek restitution of funds intended by the public to benefit a specific charity, or particular charitable purpose, along with penalties and fees.

Following are examples of deceptive charitable solicitation cases in which the Division was involved in the last fiscal year:

Commonwealth v. M & M Advertising Associates and Hugh Mayer

In July, the Attorney General obtained a consent judgment permanently enjoining the professional fundraiser from engaging in deceptive fundraising practices. The deceptive practices included falsely leading potential donors to believe that money raised would support local high school athletic programs and local senior centers. The court awarded \$17 thousand dollars to the Attorney General's Local Consumer Aid Fund.

Commonwealth v. Elite Systems, Robert Betti, Jeffrey A. Young, Howard M. Kustanovitz

In October, the Attorney General obtained a consent judgment and permanent ban against the professional fundraiser. The Attorney General's lawsuit alleged that the fundraisers deceived donors to believe that they were state or local officials and that contributions would be used for local school drug and alcohol awareness programs and fire prevention.

The solicitor was ordered to pay \$125,000 to the Attorney General's Local Consumer Aid Fund.

Commonwealth v. Sean O'Leary

In November, the Division obtained a consent judgment permanently banning the professional fundraiser from conducting charitable solicitation or controlling a charity in Massachusetts as a result of his involvement in the National Awareness Foundation's "Hugs Not Drugs" solicitation campaign.

Commonwealth v. RD Marketing

In February, the Attorney General obtained a consent judgment permanently banning the professional fundraiser from engaging in deceptive fundraising after it allegedly used deceptive practices while conducting a campaign on behalf of California's American Veterans Assistance Corporation. The solicitor was ordered to pay \$10,000 to the Attorney General's Local Consumer Aid Fund.

Commonwealth v. Civic Development Group, Police Activities League of the Baystate and Fraternal Order of Police Massachusetts State Lodge

In March, the Division obtained a consent judgment permanently barring the use of deceptive fundraising practices by the New Jersey solicitor. The Attorney General's suit alleged that the fundraiser falsely led donors to believe that funds raised would be used to support police departments and communities where donors lived. Additionally, some donors were led to believe the caller was a police officer and that they would receive preferential police treatment in return for making a donation.

The court ordered the solicitor to pay the state \$50,000. Additionally, both client organizations were ordered to pay \$5,000 each.

Commonwealth v. Baystate Benefits, Todd Rampe, America's Missing Children

In May, the Division obtained a consent judgment permanently banning Baystate Benefits and Todd Rampe from engaging in charitable fundraising in Massachusetts. The action was initiated by a complaint filed last year in which the Attorney General alleged that telemarketers working for Baystate

Benefits falsely led donors to believe that they were volunteers or employees of the Florida based charity America's Missing Children.

In addition to the ban, Todd Rampe was required to perform forty hours of community service.

ESTATES AND TRUSTS

In furtherance of his authority to "enforce the due application" of charitable trust funds and to "prevent breaches of trust in the administration thereof," the Attorney General is an interested party in the probate of all estates in which there is a charitable interest and in all other judicial proceedings affecting charitable trusts. Accordingly, the Division continued to handle a large volume of cases in this area involving such matters as proposed allowance of accounts, will compromises, sale of real estate, change of purposes or beneficiaries of charitable trusts and bequests, amendment of charitable trusts to meet IRS requirements, and termination of charitable trusts under G.L. c.203, § 25. For example:

In re: Trust u/w Lloyd G. Balfour

Article Fifth of the Will of Lloyd G. Balfour establishes a permanent fund for public charity known as the "L. G. Balfour Foundation". After negotiation with the Division, the Trustee of the Foundation filed with the Bristol County Probate Court a petition for approval of a settlement of certain potential environmental claims against the Trust in connection with the sale by the Trust of certain assets bequeathed to the Trust by the Donor. The Division assented to the petition and has caused a copy of the Judgment entered to be filed in the Trust's public file in the Division.

Town of Hamilton v. Attorney General

The Town's complaint sought permission to use the building as a library, to be developed jointly with the neighboring Town of Wenham, pursuant to a new state program encouraging joint libraries. Certain real property had been deeded to the Town in 1920 by Frederic W. Winthrop, to be

used originally as a schoolhouse, playground or park. Continued school use had become impracticable; playground use of the grounds was possible and would continue. After review and negotiation, the Division assented to the Town's complaint filed with the Essex County Probate Court.

John K. Spring, et als., Trustees of the Hervey A. Hanscom Trust v. Nasson College, et als.

The residue of the Hanscom Trust was to be accumulated for twenty-five years and then distributed to Nasson College as an endowment for its general purposes. Prior to the Trust's termination, Nasson College went bankrupt and lost degree-granting authority. The Middlesex County Probate Court ruled, in response to the Trustees' request for instructions, that the specific gift failed. On Motion of the Attorney General, the Court further ruled that the doctrine of cy pres applied to the gift. In subsequent proceedings, after review of submissions by interveners seeking to be awarded the Trust and memoranda of law submitted by the Attorney General, the Court ruled on September 27, 1995 that distribution of the \$2 million Trust to the University of Maine system to be used primarily for scholarships in the liberal arts would conform to the Donor's intent as nearly as possible.

The City of Boston, et als. v. Attorney General

The Division reviewed two separate complaints filed in the Middlesex Probate Court in June for modification of the trust fund established pursuant to the will of Lydia Cooper in connection with the consolidation of Boston City Hospital with Boston Medical Center Corporation, required to preserve the historic mission of Boston City Hospital. The first provided for certain changes necessitated by the Boston Public Health Act of 1995 but specifically preserved the fund for non-routine maintenance of the Boston City Hospital premises, rather than the benefit of the whole consolidated entity. The second permitted use of principal of the fund as collateral in connection with the FHA mortgage on Boston City Hospital, but required timely substitution of standby letters of credit to protect the capital appreciation of the fund. In each case, the Division assented after negotiation of appropriate restrictions and/or safeguards.

City of Worcester v. Attorney General

The closing of Worcester City Hospital necessitated the filing of a complaint by the City in Worcester County Probate Court, seeking cy pres of forty-odd endowment funds of the defunct hospital for public health purposes in Worcester. After negotiation, the Division assented to modified use of the funds, including uses specifically directed to the needs of youth and elders.

Wills, Trusts, and Other Probate Statistics

During the past fiscal year, the Division received 1,263 probate citations; received and reviewed 1,108 new wills, 802 of which contained charitable bequests; and received and reviewed 577 interim accounts for executors and trustees, as well as 596 final accounts. In addition, the Division received 828 miscellaneous probate matters or pieces of correspondence in new or existing probate cases, including 72 petitions for license to sell real estate and 29 petitions under G.L. c.203, sec. 25 to terminate trusts too small to be administered economically and distribute the trust property to the beneficiary, resulting in the availability of more income to the charitable beneficiaries of such trusts by reason of elimination of administrative costs. After review and negotiation, a total of 751 assents were issued in all categories of probate matters.

Public Administration

The Division represents the State Treasurer in the public administration of intestate estates which escheat to the Commonwealth because the decedent had no heirs. During the year, the Division continued to reorganize and update procedures for the 153 case files currently open. This was done in cooperation with the Treasury Department of the Commonwealth and the 48 Public Administrators currently serving in the several counties of the Commonwealth. Pursuant to these procedures, Public Administrators are to send escheated funds directly to the Treasury Department, Unclaimed Property Division. In addition, the Division opened files on 42 new intestate estates, 94 estates were closed, and 33 other miscellaneous public administration matters were handled.

CHARITY GOVERNANCE

The Attorney General's oversight of charitable corporations focuses on stewardship by charity boards of directors. The Division can become involved when directors breach their individual fiduciary duties of due care and loyalty. Under Attorney General Harshbarger, in recent years the Division has obtained a number of governance agreements, after investigation, in which charity boards have agreed to reform the manner in which they operate and, this year, obtained a criminal conviction against a charity fiduciary arising out of breach of the fiduciary duty of loyalty.

Massachusetts v. Phoebe Soares

A guilty plea was obtained from the former executive director of an inner city charity that provided prenatal and midwifery services to inner city women for embezzlement of \$20,000. The Commonwealth Defendant was sentenced to 2 years, suspended for 4 years, plus restitution, 200 hours community service, and 4 year ban on position of financial responsibility with nonprofits.

For-Profit Acquisitions

This year a substantial amount of the Division's time and resources were spent investigating three proposed for-profit acquisitions of health care providers. Massachusetts charitable organizations may not, on their own, "convert" to for-profit status. If charitable assets are to be transferred to a for-profit, it must be for fair value, the transaction must be necessary and in the best interest of the charity, and the charity board must have acted carefully and in a manner uninfluenced by conflict of interest.

At the end of the fiscal year, two acquisitions of nonprofit acute care providers -- a hospital and an HMO -- by for-profit health care chains had been investigated by the Division and approved by the court and the third investigation was pending.

Central Mass. Health Care v. Massachusetts

Central Massachusetts Health Care, Inc., a non-profit HMO, proposed purchase by Health Source, a for-profit chain. The Division's investigation of this proposed transaction included analysis by an expert hired by AG with funds provided by buyer and seller and a public comment period. After negotiation of certain provisions, the Division recommended that the court approve the sale, with court retaining jurisdiction to oversee the second stage, in which governance of the resulting \$45 million in charitable proceeds from the sale will be determined. The court followed the AG's recommendation. The buyer, Health Source, agreed to abide by AG's proposed Community Benefits Guidelines for HMO's.

MetroWest Medical Center v. Massachusetts

MetroWest Medical Center, a non-profit hospital on two campuses, proposed a joint venture with for-profit Columbia/HCA, a national hospital chain. As a result of the proposed transaction, MetroWest would sell 80% of its assets to for-profit Columbia, resulting in an 80/20 for-profit partnership resulting. After an investigation conducted with expert assistance and including a public hearing, the Division engaged in lengthy negotiations with the parties. As a result, a number of changes to the transaction were obtained and the Attorney General recommended approval of the transaction to the Supreme Judicial Court. Court approval was granted after hearing. Governance of the resulting charitable fund, consisting in large part of sale proceeds, remains to be determined through a second phase which will include a community based planning process.

St. Vincent Hospital v. Massachusetts

The Division is currently investigating the proposed acquisition of Worcester-based St. Vincent Hospital and several of its related organizations within the Fallon Health System by OrNda, a for-profit hospital chain. As in other Division investigations, an independent expert is assisting the Division and a public comment period was a component of the investigation.

Review of Asset Dispositions

Under amendments to the non-profit corporations act, which took effect in April 1990, a charitable corporation must give 30 days advance written notice to the Attorney General before making a sale or other disposition of all or substantially all of the charity's assets if the disposition involves or will result in a material change in the nature of the activities conducted by the corporation. G.L. c.180, §8A(c). During the year, the Division reviewed 31 such dispositions.

Charitable Corporation Dissolution Statistics

In order to cease corporate existence, charitable corporations must dissolve through a proceeding in the Supreme Judicial Court. To enforce the public's interest in the disposition of charitable assets, the Attorney General is a party to all voluntary dissolutions of charitable corporations under G.L. c.180, §11A. After review, negotiation of necessary modifications, and assent by the Division, the pleadings are filed by the dissolving charity in the Supreme Judicial Court.

During the reporting year, the Division assented to 81 final judgments dissolving charitable corporations pursuant to section 11A. Also, the Division filed an Omnibus Petition with the Supreme Judicial Court to dissolve 22 inactive charitable corporations under G.L. c.180, §11B.

SIGNIFICANT DIVISION INITIATIVES

Attorney General's Guidelines for Health Maintenance Organizations

The Attorney General issued community benefits guidelines for HMOs during the last fiscal year. The voluntary guidelines encourage nonprofit and for-profit HMOs to develop formal programs that promote preventive care and improve health status for disadvantaged patients and underserved populations. HMOs are asked to report on their progress. The HMO guidelines follow upon the AG's community benefits guidelines for nonprofit acute care hospitals.

Giving Season Public Education Campaign

In partnership with the Attorney General's Advisory Committee on Public Charities, the Division undertook a continuing public education campaign regarding charitable giving and charity stewardship.

In November, a Guide for Professional Solicitors and the fifth annual Attorney General's Report on Charitable Fundraising were published as part of the Attorney General's fifth annual "GIVING SEASON" public education campaign. Timed to coincide with charitable appeals during the holiday season, and in cooperation with the "Give But Give Wisely" education program conducted by the Better Business Bureau and other charitable organizations, this campaign is a long-term effort to inform individuals and businesses about the donating process and how to make sure that their contributions are put to the best possible use.

The 31-page Report on Charitable Fundraising explains how charitable fundraising works, including the role that commercial solicitors play, and analyzes the financial reports of 237 fundraising campaigns by solicitors. Of the total dollars raised in all campaigns, 34.8% went to charity. In solicitation campaigns which involved the purchase of an event ticket, product, advertising, or other "premium," the charities retained 21.37%, on average, of the gross proceeds.

Fourth Annual Conference for Non-Profit Board Members

The fourth annual conference for non-profit board members, entitled: "Non-Profit Board Members: Facing the Challenge of Change" was attended by over 400 volunteer charity directors and other members of the charitable sector. Held April 22, 1996 in Marlborough, the conference agenda focused on challenges facing charity fiduciaries as they plan for the future in a world of changing resources and changing structures.

Financial Accounting Standard No. 117

A dispute with the Financial Accounting Standards Board (FASB) regarding the accounting treatment of appreciation on donor-restricted funds held by charities was resolved during the year. A proposed FASB staff announcement appeared to interpret the Uniform Management of Institutional Funds Act to mean that appreciation on "income only" endowment funds should be classified as unrestricted. After receiving contrary views from the Massachusetts AG and others, FASB added language referring accountants to "other relevant law", thereby signalling that a particular state's law may mean that such endowment appreciation is restricted until properly appropriated.

Conference and Professional Education Presentations and Publications

As part of the Division's ongoing public education effort, the Director of the Division and other Assistant Attorneys General in the Division spoke to numerous charitable groups and served on several continuing professional education panels throughout the year, including: Massachusetts Continuing Legal Education, Boston Bar Association, Massachusetts Health Council, New England Healthcare Tax Seminar, Worcester Public Roundtable, Massachusetts Health and Educational Facilities Authority, ARC Massachusetts, National Council of Nonprofit Associations, Tufts University Lincoln Filene Center, Massachusetts Council on Aging, Children's Trust Fund; Massachusetts Society of CPA's, Not for Profit Accounting and Auditing Committee; Lions Eye Research Fund, Inc.; Massachusetts Library Trustees Association.

National Regulators Workshop on For-Profit Acquisitions

At the end of the year, the Division was developing and preparing to host in July a national workshop for regulators on the issues raised in the acquisition by for-profit businesses of nonprofit hospitals, HMO's, and Blue Cross plans. Over 50 regulators from 30 states were expected to attend this two and a half day workshop.

DIVISION ADMINISTRATION AND STATISTICS

Enforcement of laws requiring accountability by public charities is central to Division responsibilities with respect to charitable funds. With the exception of religious organizations and certain federally chartered organizations, all public charities must register with the Division and all registered charities must submit annual financial reports. The registrations and financial reports are public records and public viewing files are maintained. The Division responded to over 3,579 requests to view files in the past fiscal year and, in response, approximately 6,772 files were pulled.

Charitable Organizations: Registration and Enforcement

From July 1, 1995 through June 30, 1996, the Division processed approximately 15,227 annual financial reports and annual filing fees totalled \$1,391,330. During this period, 1,224 new organizations were reviewed, determined to be charitable, and registered. Each was sent the Division's packet of information about the Division's registration and filing requirements.

As part of an ongoing compliance program, the Division contacted approximately 9,940 charities whose annual filings were deficient or delinquent to rectify filing deficiencies.

Issuance of Certificates to Charities Who Fundraise

Under G.L. c. 68, sec. 19, every charitable organization which intends to solicit funds from the public, except religious organizations, must apply to the Division for a solicitation certificate before engaging in fundraising. Upon receipt, the Division reviews certificate applications for compliance with statutory requirements. Unless there is a deficiency in the application, all certificates are issued within a 10-day statutory period.

This year, 6,705 certificates were requested and processed.

Registration of Professional Solicitors and Fund Raising Counsel

Under §§ 22 and 24 of G.L. c.68, all persons acting as professional solicitors, professional fundraising counsel, or commercial co-venturers in conjunction with soliciting charitable organizations

must register annually with the Division. Solicitors and commercial co-venturers must also file a surety bond in the amount of \$10,000.00. All fundraisers must also file with the Division a copy of each fundraising contract which they sign with any charitable organization, and solicitors must later file a financial return regarding each fundraising campaign.

During the fiscal year ending June 30, 1996, a total of 213 registrations were received and approved, resulting in \$47,250 in fees to the Commonwealth. Registrations were received from 84 solicitors, 104 fund-raising counsel, and 25 commercial co-venturers.

TABLE I: Money Recovered

For The Commonwealth Treasury

A. Charitable Registrations, Certificate Fees, \$1,431,280.00	
And Fundraiser Registrations	
B. Other fees, requests for copies, requests	
for computer information	3,881.98

REGULATED INDUSTRIES DIVISION

The Regulated Industries Division represents consumer interests in regard to two specific industries: insurance and public utilities. Although some of the Division's work is carried on in state and federal courts, most is performed before administrative regulatory bodies: the Massachusetts Department of Public Utilities, the Federal Energy Regulatory Commission, the Federal Communications Commission, and the Massachusetts Division of Insurance. In many of these matters, particularly public utility rate cases, the Division is the only active participant advocating on behalf of Massachusetts consumers.

INSURANCE

The Division's representation of consumer interests in insurance matters is divided into several distinct categories. The Division intervenes in both automobile and health insurance rate setting proceedings. The Division also performs a consumer protection/insurance laws enforcement function: through the Division's consumer hotline and direct mail and telephone communications, the Division receives many consumer questions and complaints. Through mediation, negotiation and, if necessary, litigation, the Division obtains both restitution and injunctive relief for insurance consumers. Finally, the Division engages in non-case related work to advance insurance consumer interests, including legislative, regulatory, educational, and other outreach activities.

RATE CASES

1996 Private Passenger Automobile Insurance: On August 14, 1995, the Automobile Insurance Bureau of Massachusetts ("*AIB*") filed with the Division of Insurance its recommendation concerning the 1996 private passenger automobile insurance rates. The

industry requested a 3.15 % increase over the 1995 rates. If approved, this request would have been equivalent to an average increase in auto insurance premiums for Massachusetts drivers of \$28.00 per car or \$91 million dollars overall. On behalf of Massachusetts consumers, the Division challenged the increase requested by the industry. After several days of evidentiary hearings and responsive briefs, the Commissioner issued a decision on December 14, 1995, fixing and establishing an average rate for 1996 which is approximately equivalent to a 4.53 % decrease from the 1995 average rate. The Division's intervention resulted in savings to Massachusetts consumers of \$222 million dollars or an average of \$68 per insured automobile.

1997 Private Passenger Automobile Insurance: Proceedings concerning the 1997 automobile insurance rates began in April of 1996 with notice of the annual hearing called by the Commissioner to determine whether it was necessary that the rates for 1997 be fixed and established in accordance with M.G.L. c. 175, §113B. The Division participated in these hearings and took the position that market conditions continued to require that rates be set pursuant to M.G.L. c. 175, §113B. The Division noted, however, that some level of competition already existed in Massachusetts as a result of the large number of group rates and deviations approved by the Commissioner during 1996. No decision had been issued by the end of the fiscal year although the Commissioner did ultimately concur with the Division's position and order that 1997 rates be fixed and established.

1995 BCBS Non-group Insurance: In April, 1995, BCBS proposed an 8 % increase in its Managed Major Medical (MMM) nongroup insurance product. The Division intervened in proceedings before the Division of Insurance in opposition to this rate increase. On August 8, 1995, BCBS filed an amendment to the above filing to change the product offerings. In light

of the proposed reform of the nongroup health insurance bill pending in the state legislature, the Division and BCBS negotiated a continuance in the rate case pending passage of reform legislation. Accordingly, there have been no increases in BCBS nongroup indemnity plans since 1993. This case will continue into the next fiscal year before it is resolved.

1996 Bankers Life and Casualty Medicare Supplement Insurance: In November, 1995, Bankers filed with the Division a request for 30% rate increases for four Medicare supplement insurance products with prescription drug benefits, one of which is currently marketed to enrollees. The company also filed a request for a 21.5% rate increase for its closed core product and for its currently marketed core plan. Representing the interests of seniors who may purchase this insurance, the Division intervened, resulting in the Commissioner's approval of increases in the range of 10.4% to 15.5% for the six products. The total amount saved for consumers was approximately \$5 million.

1996 Mutual of Omaha and New York Life Company Medicare Supplement Insurance: In July 1995, Mutual of Omaha and New York Life Insurance filed with the Division of Insurance for approval of new Medicare supplement plans. The cases were consolidated for hearings and for decision. After hearings were concluded, the two companies stipulated to reduce their rate request for their Medisupp 2 product from \$198 to \$166 per month, saving the consumers who signed up for these new products approximately \$384 per annum in premiums. Mutual of Omaha also agreed to reduce its 35% increase request for its pre M.G.L. c. 176K prescription drug plan to 20%, thereby resulting in savings to consumers of over \$50,000.

1995 Prudential Insurance Company - AARP Medicare Supplement Insurance:

In the fall of 1995, the Division participated in hearings to consider the Prudential's proposed Medicare supplement insurance requests for increases in their pre OBRA and pre M.G.L. c.176K plans. The Attorney General participated in the hearings. The case was settled through stipulations that required the inclusion of mandated benefits and notice to all consumers of the new plan offerings available as a result of the enactment of M.G.L. c.176K (Medicare Supplement Insurance Reform) which mandated coverage to all consumers at generally lower rates.

Mutual of Omaha Medicare Supplement Insurance: In the fall of 1995, the Division participated in hearings to consider Mutual of Omaha's proposed Medicare supplement insurance requests for increases in their pre OBRA and pre M.G.L. c. 176K plans. The Attorney General participated in the hearings. The case was settled through stipulations that required the inclusion of mandated benefits and notice to all consumers of the new plan offerings available as a result of the enactment of M.G.L. 176K (Medicare Supplement Insurance Reform) which mandated coverage to all consumers at generally lower rates.

CONSUMER PROTECTION/ENFORCEMENT

The Division also engaged in non-rate case related insurance work during fiscal year 1996 that involved consumer protection issues and/or enforcement of the Commonwealth's insurance laws. Representative matters include:

EMPLOYERS FAILURE TO REMIT HEALTH INSURANCE PREMIUMS

During the 1996 fiscal year, the Division continued its work in this area which had been initiated in a prior fiscal year.

Investigations

The Division investigated over 60 employers in response to complaints by employees that their health insurance had lapsed because of the failure of their employer to pay health insurance premiums or otherwise to provide sufficient funding to cover their employees' health costs. Some of these complaints involved a dispute between a single employee and the employer, and were resolved by payment of the outstanding medical claims by either the employer or the insurer. Other complaints required the Division to take more formal action as described below.

Civil Litigation

The Division entered into consent decrees with two Massachusetts employers who had represented to their employees that they were withholding funds for the payment of health insurance premiums and also represented to employees that they were providing health insurance when in fact they were not. The consent decrees provided that the employers would pay all outstanding medical costs of injured employees, take appropriate action to cure any harm to employees' credit rating and make contributions to the Massachusetts Consumer Aid Fund. The medical claims of almost three hundred employees were paid as a result of these settlements. Both employers, *Barboza Enterprises, Inc.*, a car dealer, and *State Line Snacks Corporation*, had initially raised ERISA preemption arguments which, after hearings, were rejected by the Massachusetts Superior Court.

Criminal Litigation

The Division obtained a grand jury indictment of one employer that it originally had investigated for failure to remit health insurance premiums. Further investigation revealed that

the employer, John E. Flynn, Jr., the owner and CEO of the Boston architectural firm Alonzo B. Reed, Inc., also had failed to remit various other payroll withholdings, including employees' contributions to the employer's 401(k) plan and state withholding taxes. Flynn has pleaded not guilty in Suffolk Superior Court to two counts of felony larceny, four felony counts of failure to account for and pay over withholding taxes, and two misdemeanor counts of failure to file state income tax returns. This is believed to be the first case in which an employer has been prosecuted under a state larceny statute for theft of employee funds. The Division also provided the U.S. Attorney's Office in Boston with evidence of the Defendant's violation of various federal laws that the Division obtained in the course of its investigation.

Business Agreements

During the fiscal year, the Division entered into "business agreements" with three employers, **MSE Electrical Contracting**, **Carr Leather**, and **Design Pak**, in which the employers agreed to pay the outstanding medical claims of their employees, and to keep such payments up to date in the future. Approximately \$135,000.00 in medical claims were paid as a result of these agreements.

Regulations

Pursuant to the Attorney General's consumer protection authority under M.G.L. c. 93A, the Division promulgated regulations to make it an unfair and deceptive act or practice for insurers, including health maintenance organizations, to deny medical claims on the basis that an employer has failed to remit premiums unless they previously have given written notice to subscribers that the employer's plan had been terminated. After public hearing, the regulation (940 CMR 9.00) became effective on March 1, 1996.

Joint Initiative with the U.S. Department of Labor

The Division and the U.S. Department of Labor continued to collaborate in certain investigations and proceedings against employers that have failed to remit health insurance premiums or adequately fund their health plans.

Legislation

The Division testified before the state legislative Committee for Commerce and Labor in support of legislation to amend M.G.L. c. 149 §150C. The current legislation simply places liability on corporations for failure to remit premiums to commercial insurance companies. The proposed legislation would make persons responsible for the failure to make premium payments personally liable for any resulting harm to employees as well as making them criminally liable. The legislation also expands the scope of the current legislation for failure to remit premiums to Blue Cross and Blue Shield and to health maintenance organizations. The legislation was drafted by the Division and filed by Sen. Pacheco in the previous fiscal year. At the close of the fiscal year, it was pending before the Commerce and Labor Committee.

HOMEOWNERS INSURANCE

The Division continued its work in the examination of the problems faced by urban dwellers in the purchase of homeowners insurance.

Report on Redlining in the Homeowner's Insurance Market.

In July 1995, the Division issued the Attorney General's Special Report on Redlining in the Homeowner's Insurance Market. The Report detailed the status of insurance for urban dwellers and its availability and affordability. The Report also included the results of an examination, conducted by the Office of the Attorney General, of the writing practices of the

industry. Recommendations were made for measures to improve the type of insurance available to urban dwellers. Many of the recommendations were similar to those contained in a bill then pending in the state legislature. The bill, on which the Division had worked closely with consumer advocates and others, was signed into law by the Governor during the fiscal year and contained the majority of the recommendations contained in the Report. Other recommendations were voluntarily adopted by the insurance industry without legislation.

LONG-TERM CARE INSURANCE

The Division continued its work in the examination of problems faced by elders in financing nursing home and other long-term care.

Consumer Complaints and Education

The Division started investigations, that are still ongoing, into several consumer complaints concerning the marketing practices of various long-term care insurers and their agents. The Division responded to consumer inquiries regarding long-term care insurance policies.

Interagency Workgroup

Members of the Division, along with Bureau attorneys, participated in an interagency workgroup (including the Division of Insurance, the Division of Medical Assistance and the Executive Office of Elder Affairs) concerning the future financing of long-term care in Massachusetts. The purpose of the workgroup is to develop strategies both to increase the private financing of long-term care, and to provide financial security to elders who risk impoverishment by the costs of long-term care. The Division oversaw the work of a Kennedy School of Government student who produced a report on public-private partnerships for long-

term care insurance, one of the strategies under consideration by the workgroup. The workgroup will be continuing into the next fiscal year.

NEGOTIATED HOSPITAL DISCOUNTS

The Division conducted a survey of the health insurers and health maintenance organizations that provide coverage to Massachusetts consumers to determine their practices concerning the passing along of negotiated hospital discounts to their subscribers and members. The Division's analysis of the information received in response to the survey will continue into the next fiscal year.

LEGAL ACTIONS

Commonwealth v. Poitras and the Massachusetts Lobstermen's Association: In April of 1990, the Attorney General filed a complaint in Suffolk Superior Court against the Massachusetts Lobsterman's Association (the "MLA") and other defendants alleging that the defendants had, during the period 1985 through 1988, marketed and sold an accident and health insurance plan to fishermen and others in Massachusetts, without being licensed to do so. The suit further alleged that defendants failed either to pay, or promptly to deny, valid claims filed against the health insurance plan in the aggregate amount of approximately \$3 million. In January, 1996, the Division filed a Motion for Summary Judgment as to liability only. Extensive oral argument was heard on the Commonwealth's motion on June 20. No decision had been issued by the end of the fiscal year.

In re Theodore Johansson: On June 10, 1994, the Division entered into an Assurance of Discontinuance with Theodore Johansson, a Framingham insurance agent, who had been actively engaged in marketing and selling unauthorized insurance products, particularly those

of Amalgamated American Employees Association (the "AAEA"), Amalgamated American Employees Association Benefit Fund (the "AAEABF"), the American Business League (the "ABL"), United Healthcare Benefit Trust ("UHBT"), and United Association of Small Businesses (the "UASB"). Pursuant to the Assurance of Discontinuance, Mr. Johansson agreed to discontinue selling these products, to pay certain civil damages and costs to the Commonwealth, and, at his clients' option, either to refund all premiums collected or to pay all medical claims incurred by his clients while their policies were in effect. Mr. Johansson subsequently failed to comply with the terms of the Assurance of Discontinuance in several material respects, specifically by failing to make, or even to offer, full restitution to his clients. Mr. Johansson subsequently filed for bankruptcy protection. The Division intervened in the bankruptcy case and obtained additional relief for consumers in the amount of \$50,000.00.

Commonwealth v. Ernest Gallo: In April, 1994, the Division entered into an Assurance of Discontinuance with Ernest Gallo, a Leominster insurance agent who was then engaged in the marketing and selling of many of the same unauthorized insurance products as Mr. Johansson -- specifically, products offered by the AAEA, the AAEABF and the ABL. The Assurance provided that Mr. Gallo would discontinue selling these products, would pay certain civil damages and costs, and, at his clients' option, either refund all premiums collected or pay all medical claims incurred by his clients while their policies were in effect. Mr. Gallo, too, failed to comply with the terms of his Assurance of Discontinuance and, in February, 1995, the Division brought suit against him in Worcester Superior Court. In June, 1996, Mr. Gallo agreed to accept a permanent injunction barring him from selling all such products in the future, and further agreed to pay the Commonwealth \$3,000 in full settlement of the

Commonwealth's claims. Because Mr. Gallo has filed a third-party action against the out-of-state sponsors of the insurance plans, the Court must approve the proposed settlement; such action is still, therefore, pending.

Commonwealth v. Attias Corporation: The Division obtained a consent judgment against this rental car agency (doing business as "Rent-A-Wreck"), under which the agency agreed to make restitution to injured consumers of \$3,000; pay the Attorney General's Local Consumer's Aid Assistance Fund over \$9,000; and change the standard rental form it provides to consumers. The agency had used rental forms that were in violation of the Massachusetts statute regarding collision damage waivers.

Commonwealth v. Coletti: The Division filed a complaint against an insurance broker, William Coletti, alleging that he had accepted premium payments from consumers but failed to remit the premiums to the insurance companies. The Division obtained a preliminary injunction enjoining Coletti from depositing premium payments into his own accounts. The Division also obtained restitution for injured consumers. The case was in the discovery phase at the end of the fiscal year.

ASSURANCES OF DISCONTINUANCE

The Division entered into three Assurances of Discontinuance during fiscal year 1996 which resulted in benefits to Massachusetts consumers of \$58,000.

In the matter of Sportsmed: The Division obtained an Assurance of Discontinuance from this provider of physical therapy services to enrollees in the Group Insurance Commission's indemnity plan (known as the "Hancock Plan".) Sportsmed agreed to forego collecting amounts in excess of \$50,000 that it had "balance billed" enrollees. Sportsmed also agreed to

conform its billing practices to the requirements of the Hancock Plan, and to provide clear explanations to enrollees about the share of the bill for which they are responsible (the copayment.) Finally Sportsmed agreed to waive copayments on a sliding scale for lower income consumers.

In the Matter of Alan N. Rosenfield: In October and November, 1995, the Division investigated reports that Mr. Rosenfield, an agent who had recently sold his proprietary interest in an insurance agency in Central Square, Cambridge, had failed, on multiple occasions, to transmit premiums received by him to the relevant insurance company, causing various consumers to become, unknowingly, uninsured. The Division determined that Mr. Rosenfield had engaged in this practice to a fairly significant extent in 1994, conduct for which he had paid restitution, and for which he had been sanctioned by the Division of Insurance. Our investigation also determined, however, that at least one consumer had been rendered uninsured by Mr. Rosenfield's actions subsequent to the DOI's intervention, and had sustained an uninsured loss of approximately \$8,000 to her home as a result. The Division served a five-day letter upon Mr. Rosenfield in November, 1995, pursuant to Chapter 93A. After negotiations with this Office, Mr. Rosenfield agreed to make full restitution to the harmed consumer, and to enter into an Assurance of Discontinuance in which he agreed permanently to terminate the practice in question, and to make prompt restitution to any harmed consumer who may subsequently come forward. The Assurance of Discontinuance was entered by the Suffolk Superior Court in February, 1996. Mr. Rosenfield is no longer a practicing insurance agent.

In the Matter of James Hourihan: The Division obtained an Assurance of Discontinuance from this insurance broker who, on several occasions, took premiums from

consumers and did not purchase an insurance policy. The broker, whose license was revoked by the Division of Insurance, agreed that he would not, at any time, engage in the business of insurance.

CONSUMER COMPLAINTS

After investigation and intervention, Assistant Attorneys General in the Division were instrumental in resolving several matters involving “vanishing premiums” on behalf of consumers with an estimated value to consumers of over \$420,000. Companies that participated in these settlements were : **Prudential Life Insurance Company of America, Boston Mutual Life, Equitable Life Assurance Society, Metropolitan, Bankers Life, New York Life, Sentry, The New England,**

In addition to the many consumer complaints which the Division was able to resolve on behalf of consumers, members of the Division explained and worked with many consumers to guide them in such matters as: understanding the intricacies of various entitlement programs and the interplay between them; the billing practices of their health insurers; continuation of health insurance coverage following termination of employment or following divorce and the like. While no monetary consumer benefit can be placed on these activities, they provide a valuable service to Massachusetts consumers, many of whom are elderly or who have no other sources to turn to.

Consumer Hot-Line and Paralegal Resolution of Inquiries and Complaints:

During the fiscal year, the division received and responded to over 6,000 telephone inquiries; almost 1100 written complaints, an increase of 50 % over the number received in the prior

fiscal year. Over \$750,000.00 were received by consumers through the intervention of the paralegals and volunteer interns, an increase of almost 300 % over the prior fiscal year.

OTHER ACTIVITIES

LEGISLATIVE ACTIVITIES

Non-group Health Insurance Reform

Division staff worked in cooperation with a legislative coalition, chaired by Rep. Byron Rushing, to craft a bill (H. 5601) that would reform the nongroup health insurance market, ensure portability of coverage in all markets and amend the small business law to increase the size of groups from 25 to 50. The bill, enacted after the end of the fiscal year, includes reforms that the Attorney General has long advocated: mandatory access to coverage regardless of health status, no preexisting condition exclusions, no waiting periods, annual open enrollments, modified community rating and standard benefit packages. The bill guarantees access to health insurance to more than 600,000 Massachusetts residents who are currently uninsured.

Health Care Access

Division staff worked with legislative leaders and a coalition of over fifty health related organizations to secure enactment of legislation which: expands Medicaid eligibility to approximately 93,000 more Massachusetts citizens; expands eligibility to the Children's Medical Security Plan to approximately 125,000 more children; and established a prescription drug assistance program to approximately 65,000 needy seniors.

Patient Protection Act

Division staff testified in favor of a bill that would require health maintenance organizations (“HMOs”) to provide greater disclosure to their members regarding the operations of HMOs.

REGULATORY ACTIVITIES

Medigap Insurance

In June 1996, the Division presented testimony at a public hearing convened by the Division of Insurance to monitor the overall condition of the Massachusetts market for Medicare supplement insurance following the reform enacted by the legislature in December, 1993.

Risk Bearing Providers

In September 1995, Division staff presented testimony to the Division of Insurance regarding the insurance status of physician hospital organizations that contract directly with purchasers of health care services.

At the request of the Massachusetts Organization of State Engineers and Scientists, the Division conducted an investigation into the change, by CMHC, a Worcester based HMO, from an open drug formulary to a closed formulary. Although no violation of law was found with regard to the operation of the closed formulary, CMHC returned to an open formulary soon after the investigation began and the Division continued to examine the procedure by which the change had occurred into the next fiscal year.

MISCELLANEOUS ACTIVITIES

Guest Speakers

Members of the Division made presentations to several organizations regarding insurance and financial exploitation of elderly. One member of the Division participated in the Massachusetts Continuing Legal Education's Annual Health Law Update. A member of the Division made a presentation to the Boston Chapter of the AARP on purchasing Long Term Care Insurance.

Public Education Programs

Consumer University

A member of the Division participated in the presentation of Consumer University, an Attorney General sponsored consumer advice program that was presented to over a 1,000 consumers statewide.

Elder Health Care: Crisis at the Crossroads

Members of the Division participated in, and drafted a Conference Report on this follow-up event to the White House Conference on Aging.

Newsletter

The Division prepared and distributed, to approximately 2,000 elderly consumers, a newsletter explaining the reform of the way in which Medicare Supplement insurance policies are sold in Massachusetts and advising them of their options.

ESTIMATED SAVINGS TO CONSUMERS

Auto Rate Cases	222,000,000
Health Insurance Rate Cases	5,050,000
Consumer Insurance Matters	563,000
Consumer Hotline	<u>750,000</u>
Total	228,363,000

UTILITIES

The composition of the Regulated Industries Division's utility workload in fiscal year 1996 continued to reflect the rapid and dramatic changes underway in the telephone, electric and gas utility industries: there were few traditional rate cases and much of the Division's work involved consideration of alternative approaches to rate regulation that place greater reliance upon utility performance and competitive forces and less on the review of actual utility costs. These efforts involved advocating new structures and rules to maximize the consumer benefits from the change in regulatory approach and protecting the interests of small residential and business customers during the transition to new regulatory frameworks. While some of this work occurred in contexts applicable to all three of the public utility industries, most occurred either in the context of industry specific administrative rulemaking/factfinding proceedings or in adjudications of specific cases. Examples of the Division's public utility work relative to each industry in fiscal year 1996 include:

Telecommunications

NYNEX, D.P.U. 95-83. In August, 1995, New England Telephone Company (d/b/a/ "NYNEX") made its first "price caps" compliance filing, in which it proposed rate changes designed to produce a \$38.3 million reduction in revenues for the twelve month period beginning September 1, 1995. This filing was required under the terms of the DPU's May 1995 decision in which it rejected

the traditional rate of return form of rate regulation. The Department did, however, adopt in large measure many of the improvements to the structure of the Company's proposal that the Division had argued were necessary to protect the public interest. It ordered stricter service quality standards than those proposed by the Company and required the Company to pay significant penalties in the form of lower future rates if it fails to meet those standards. In addition, it ordered a more than a 50 % increase in the assumed rate of productivity improvement by the Company (from 2.5 to 4.1 %) that must be subtracted from the inflation rate to determine the amount by which its rates will be permitted/required to change. As a result of the Division's success on the productivity offset and service quality penalty issue, the Company's filing at the close of the fiscal year resulted in a \$38 million decrease in its rates rather than a \$3.4 million increase it would have been permitted under its original proposal.

Commonwealth v. Info Access, et al. Following oral argument October 30, 1995, the U.S. District Court for the District of Massachusetts denied motions to dismiss filed by the four defendants in a law suit filed in October, 1994 by the division. The suit concerned the provision of "pay per call" services over 1-800 telephone numbers by the four defendants: InfoAccess, Inc.; MSI Operator Assist, Inc.; Phone I.D., Inc.; and ATI Operator Assist, Inc. This suit, which was the first action ever filed by a state Attorney General under the Telephone Disclosure and Dispute Resolution Act ("TDDRA") of 1992, was filed in response to numerous consumer complaints over charges included in their telephone bills for calls purportedly made to 1-800 numbers. The complaint alleged that the defendants' provision of "pay per call" services through 1-800 numbers violated the terms of TDDRA, the TDDRA regulations promulgated by the FCC and the Federal Trade Commission and the Massachusetts Consumer Protection Act. Among others, the complaint alleged that the following actions of the defendants were contrary to the requirements of TDDRA: advertising and providing pay per call services through 1-800 numbers without first securing a valid agreement to pay for such services with the party to be billed; failing to make appropriate disclosures in advertisements regarding

the cost of calls to the service; and failing to include the disclosure “preamble” message required by TDDRA. Informal pretrial discovery was underway at the end of the fiscal year.

Telephone Competition, D.P.U. 94-185/F.C.C. 96-98. In January, 1995, the DPU opened an investigation to consider the adoption of regulatory mechanisms to encourage and develop competition within the Massachusetts local telephone market. Following a round of prefiled written testimony and discovery, 1995, extensive evidentiary hearings were held in the summer and fall of 1995. Initial briefs were filed in January but following enactment by Congress of the Telecommunications Act of 1996, which required that the Federal Communications Commission (FCC) promulgate similar rules, the DPU deferred resolution of most the issues pending the conclusion of the FCC proceeding. In May, the division filed its reply brief on the issues still before the DPU as well as comments with the FCC. At the end of the fiscal year, neither the FCC nor the DPU had issued decisions.

Electricity

Electric Utility Restructuring, D.P.U. 95-30. On August 15, 1995, the Department issued a decision in its investigation into the question of whether the Commonwealth’s electric utility industry should be restructured to allow competition and consumer choice to control the price of power sold in Massachusetts. In this decision, the Department agreed with many of the positions advanced by the Division in comments filed earlier in the year. In particular, it indicated that reducing cost, over time, for all consumers of electricity was its primary objective and found that the interests of ratepayers would best be served by an expedient and orderly transition from regulation to competition in the generation sector. In order to facilitate development of an efficient industry structure and regulatory framework that minimizes long-term costs to consumers while maintaining the safety and reliability of electric services with minimum impact on the environment, the Department established a schedule by which electric companies must file within six months: (1) a plan for moving from the current regulated

industry structure to a competitive generation market and to increased customer choice: (2) illustrative rates and supporting information that, at a minimum, indicate unbundled charges for generation, distribution, transmission, and ancillary services: (3) an identifiable charge reflective of the level of stranded costs to be recovered, if any, with all necessary supporting information; and (4) a plan for incentive regulation of the transmission and distribution systems.

Electric Utility Restructuring, D.P.U. 96-100; *Massachusetts Electric Company*, D.P.U. 95-25; *Boston Edison Company*, D.P.U. 96-23; *Eastern Edison Company*, D.P.U. 96-___; *Western Massachusetts Electric Company*, D.P.U. 96-___. In compliance with the DPU'S August 11, 1995 order in *Electric Industry Restructuring*, D.P.U. 95-30, four major electric utilities filed restructuring plans on February 16, 1996. In response to these filings, the Department opened a Notice of Inquiry/Rulemaking to examine issues related to: (1) market structure, (2) market power, (3) transmission, (4) distribution, (5) stranded cost calculation and recovery mechanism, (6) rate unbundling, (7) performance-based ratemaking, (8) environmental regulation and demand-side management, (9) default service, (10) universal service, (11) the effect of restructuring on municipal electric companies, and (12) the local and utility tax impacts of restructuring. During the spring, the Division and other interested parties filed comment analyzing and proposing changes to the utility restructuring plan. In these Comments, the Division articulated the five restructuring principles that the Attorney General had adopted earlier: restructuring should result in lower prices; the benefits of restructuring should be made available to all consumers; a restructured utility industry must continue to protect the environment and promote conservation; restructuring should ensure some measure of affordability for low-income consumers; and the transition to a fully functioning, stable and reliable restructured market for electric power must be monitored closely. On May 1 the Department issued a proposed "restructuring" regulation. The Division filed comments on the proposed regulations and participated in hearings on those regulations that began in June and were still continuing at the end of

the fiscal year. Final comments are to be filed in August 1996 and a decision is scheduled for September.

Cambridge Electric Light Company, D.P.U. 95-36/94-101. In March, 1995, Cambridge Electric Light Company ("CELCo") sought DPU approval of new tariffs to be apply to large industrial customers that installed their own electric power generating equipment and thereby become "partial" rather than "total requirements" customers. This filing followed a May, 1994 filing by the Massachusetts Institute of Technology ("MIT") seeking a DPU order establishing partial requirements rates applicable to the service to be provided by the Company to MIT after it completed construction of its own electric power generating unit. In 1994, MIT had purchased more than 10 % of all the electric power sold by the company to end users. In addition to tariffs setting forth the charges for partial requirements services, the company filing also included a proposed exit fee to recoup most of the costs which would be "stranded" by MIT's departure. In the briefs filed during the summer of 1995, the Division argued that the burden of any costs "stranded" by the departure of MIT should be borne by either or both of the entities whose actions gave rise to those costs (the Company's shareholders or the departing customer), not the Company's remaining customers. On September 29, 1995 the DPU determined that it was appropriate to balance the interests of the potential self-generation customers, the Company, and the Company's other ratepayers by apportioning the stranded costs claimed by the Company in a manner where by MIT was required to make payments to the Company to offset 75 % of the net costs "stranded" by the decision to rely on self-generation for a significant portion of its power needs. MIT has appealed this decision to the Supreme Judicial Court.

Massachusetts Electric Company, D.P.U. 95-40. In March, 1995, Massachusetts Electric Company sought DPU approval of either an alternative form of regulation or a rate increase of \$62 million. Under the terms of the Company's alternative regulation proposal, its rates would not be governed by traditional cost of service regulation, but would be allowed to increase each year by 20 %

of the amount by which its average rates are below the average for other Massachusetts electric utilities. If accepted, this proposal would result in a \$25 million increase in 1995 and \$30 million increases in succeeding years. The Company proposed to collect \$56 million of its proposed \$62 million increase from its residential customers, an increase that would result in a 13 % increase for the average residential customer. The DPU held two days of hearings in May on the alternative regulation proposal and in briefs filed in June the Division urged the DPU to reject the proposal because, among other deficiencies, the proposal did not create any incentive to lower rates and, instead, was designed to reward the Company for its past decisions. On July 21, 1995, the DPU rejected the Company's alternative regulation proposal. Thirteen additional days of hearings were held in June on the Company's proposed rate increase, during which the Division challenged the overall rate increase and presented the testimony of an expert witness to challenge the Company's proposed allocation of costs between its various customer classes. On September 28, 1996, the DPU issued its final order granting the Company only \$31 million of its requested \$62 million increase. In addition, the DPU agreed with the Division that the proposed allocation of the increase was unfair and awarded only a 0.26 % increase to residential customers.

Nantucket Electric Company/NEES, D.P.U. 95-67. In May, 1995, the Division reached an agreement with Nantucket Electric Company and the New England Electric System ("NEES"), the parent company of Massachusetts Electric Company, concerning the terms under which NEES would be allowed to acquire Nantucket. Under the agreement, NEES agreed to reduce Nantucket's current base rates charged by 5 %, effective upon DPU approval of the acquisition. NEES also guaranteed that Nantucket's base rates would not increase during the first year of the operation of a submarine cable to be constructed to connect the island with the New England Power Pool. The DPU initiated an investigation into the proposed merger late in June, 1995 and in a decision issued on October 10, approved the merger and the settlement agreement.

Boston Edison Company, D.P.U. 95-1A-1.

The Division participated in the DPU's review of Boston Edison Company performance of its operation of its electric power generating units during the period from November, 1993 through October, 1994. In briefs filed in the spring of 1995, the Division urged the DPU to find that actions by Boston Edison in operation of its power plant did not satisfy the prudent operations standard. It argued that the Company should be required to make refunds for replacement power costs previously collected in regard to nearly 20 days of outages at the Pilgrim nuclear plant as well as various outages at the Company's New Boston and Mystic generating plants. A decision by the DPU had not been issued at the close of the fiscal year.

Fitchburg Gas & Electric Company, D.P.U. 95-75.

On June 15, 1995, Fitchburg Gas & Electric Company filed tariffs that would create a unique type of Economic Development rates for new or expanding industrial customers based on market-based energy pricing. This service was designed to promote economic growth in the Company's territory. The new tariff would be available only to large industrial general service customers and sets the price for the power component of the service based upon a wholesale market price of power. Incremental power supply acquisitions for Energy Bank requirements will be procured directly from the wholesale market through competitive acquisitions rather than through traditional electric utility supply acquisition approaches. The result will be a rate which equals 5¢/KWH rather than the current 8¢/KWH. Energy Bank service will also benefit existing customers since the Company intends to flow through the contributions Energy Bank customers will make to transmission and distribution costs. On November 2, 1995, the Division filed a brief supporting the FG&E proposal with proposed modifications that the DPU ensure that costs incurred to secure new power supply for Energy Bank customers do not have an adverse impact of the Company's existing customers, and that any cost reductions to existing customers are directly credited to customer bills. On November 30, 1995 the Department issued a decision approving Energy Bank Service with the Division's proposed modifications.

April 30, 1996, the DPU approved a settlement between Western Massachusetts Electric Company ("WMECo") and the Attorney General which terminated the Company's 1994 and 1995 Generating Unit Performance Reviews and a portion of the 1996 Performance Review relating to the Millstone Unit 2 October 1, 1994 Refueling Outage (RFO 12). The Settlement continues, until March 1, 1998, the existing rates that reflect the \$8,000,000 per year reduction in WMECo's customers' overall 1994 bills that would have otherwise terminated on February 1, 1996 and that the Department approved on May 24, 1994 as part of a previous settlement with the Attorney General. (\$16.6 million total rate reduction). The Settlement also resolves other outstanding issues. The Company will not seek to recover from customers \$17 million (\$7,000,000 per year for 1996; \$10 million per year for 1997) of additional expenses that will be used to increase the decommissioning funding accruals for Millstone Units 1, 2 and 3 and pay deferred income tax obligations related to generation assets. The settlement also provides for the transfer of \$8 million of lost base revenues now included in the Company's Conservation Charge to base rates.

Gas

Bay State Gas Company, DPU 95-52/104 -On December 22, 1995 the DPU approved a settlement that the Division had reached with Bay State Gas Company under which the Company was required to unbundle all of its commercial and industrial rates into separate transportation and gas portions and, thereby, allow all of its business customers to choose whether to purchase gas from the Company or competitive suppliers. As a part of this redesign of its rates, the Company increased its existing "transportation" rates to include monies for system costs that previously had not but should have been collected from transportation customers.

In addition, the settlement required the Company to establish a path breaking residential transportation pilot program in its Springfield Division. At the end of the fiscal year, customers were in the process of being solicited for participation in the pilot program.

Interruptible Transportation and Capacity Release, DPU 93-141A and 141B

On February 14, 1996 the DPU issued a decision in an investigation concerning pricing mechanism for interruptible transportation ("IT") service and capacity release ("CR") transactions as well as the ratemaking treatment to be accord revenue from such transactions. In its decision, the Department adopted the positions taken in comments filed earlier by the Division, determining that the pricing for IT service should reflect the value of service (*i.e.*, the price of competitive alternatives) and directed that all margins be flowed through to all firm sale and transportation customers on a 75% ratepayer, 25% shareholder split on those margins that exceeded a threshold amount. The threshold was set at the level of margins from the last 12 months (ending April, 1996), and any margins below that threshold will flow 100% back to firm customers. For CR margins, the margins above the annual threshold would be subject of the same 75%-25% split but these margins would be flowed through only to firm sales customers.

Boston Gas Company, D.P.U. 95-50. On May 17, 1996, the Company petitioned the DPU for a rate increase of \$30 million in annual revenues or a 5 % increase. The Company also requested approval of an alternative form of rate regulation or Performance Based Ratemaking and requested that its rate be unbundled into distribution and commodity charges. The Division intervened in this proceeding on behalf of those utilities' customers. At the close of the fiscal year, a procedural schedule had not yet been adopted in this proceeding.

Fall River Gas Company, D.P.U. 96-60. On May 17, 1996, the Company petitioned the DPU for a rate increase of \$5.1 million in annual revenues or a 11.86 % increase. The increase would result in increases to small customers during the winter months of between 15 and 24 %. The Company also

requested approval of an alternative form of rate regulation or Performance Based Ratemaking. The Division intervened in this proceeding on behalf of those utilities' customers. At the close of the fiscal year, a procedural schedule had not yet been adopted in this proceeding.

Essex County Gas Company, D.P.U. 96-70. On May 15, 1996, the Company petitioned the DPU for a rate increase of \$3.4 million in annual revenues or a 7.4 % increase. The increase would result in increases to small customers during the winter months of between 10% and 12%. The Division intervened in this proceeding on behalf of those utilities' customers. At the close of the fiscal year, a procedural schedule had not yet been adopted in this proceeding.

Blackstone Gas Company, D.P.U. 96-65. On June 15, 1996, the Company petitioned the DPU for a rate increase of \$114,000 in annual revenues or a 13.2 % increase. The increase would result in increases to small customers during the winter months of between 10 and 13 %. The Company also requested approval of an alternative form of rate regulation or Performance Based Ratemaking. The Division intervened in this proceeding on behalf of those utilities' customers. At the close of the fiscal year, a procedural schedule had not yet been adopted in this proceeding.

Miscellaneous

The Boston Edison DSM Settlement Board. The Settlement Board, which is chaired by the Attorney General, undertook the following initiatives:

- On September 28, 1995, the Settlement Board was the primary sponsor of a "Distributed Utility Workshop", which was held at the Boston Park Plaza and attended by over 100 energy professionals from across the nation. The Division Chief and an Assistant Attorney General from the Division spoke at the Workshop.
- The Settlement Board filed written testimony on February 29, 1996 and presented oral testimony on May 30, 1996 before the Massachusetts Board of Building Regulations and

Standards proposing revisions to the Massachusetts State Building Code aimed at increasing energy efficiency in low-rise residential buildings.

- The Settlement Board co-sponsored a conference on June 7, 1996 entitled: "Integrating Clean Air Policy to Improve Air Quality and Reduce Pollution Control Costs for the Electric Power Industry." The conference featured presentations by and panel discussions between environmental, health care, energy and governmental professionals.

ESTIMATED SAVINGS FOR MASSACHUSETTS UTILITY CONSUMERS: \$80 million

CIVIL INVESTIGATION DIVISION

The Civil Investigation Division conducts investigations primarily for divisions within the Public Protection and Government Bureaus. In addition, CID also investigates cases or matters within the Family and Community Crimes and Business and Labor Protection Bureaus and, on occasion, for the Executive Bureau, or in conjunction with the Criminal Bureau.

The major duties of Division investigators are: locating and interviewing victims, witnesses, subjects and others; obtaining and reviewing documentary evidence from numerous sources including individuals, corporations, and federal, state, county and municipal agencies; conducting surveillance, background checks and asset checks; analyzing financial records and performing other forensic accounting functions; and, testifying before the Grand Jury and at trial.

In fiscal year 1996, the Division initiated 474 investigations in the following major areas:

PUBLIC PROTECTION BUREAU

Consumer Protection and Antitrust

Investigators continued to perform their traditional role by assisting the office in bringing G.L. c. 93A enforcement actions against businesses and individuals in major consumer areas such as automobile sales and repair, credit repair services, travel services, health spas, retail sales, computer scams, advance fee loan scams and employment schemes. Areas also included numerous issues affecting the elderly and vulnerable populations such as the unauthorized practice of law, investment and home improvement scams.

The Division also initiated several investigations and surveys to determine compliance with existing laws and regulations pertaining to numerous consumer areas.

Civil Rights/Liberties

The Division investigated "hate crimes," allegations of police misconduct and other violations of the Massachusetts Civil Rights Act. Investigations were also conducted into allegations of

discriminatory housing and employment practices, as well as investigations to determine compliance with the rules and regulations established by the Americans with Disabilities Act and the Architectural Access Board. Division staff interviewed victims, witnesses and, where appropriate, subjects of such investigations. Investigators obtained and reviewed police reports, court documents and other available evidence.

Public Charities

The Division investigated individuals associated with organizations who raised funds from the public in violation of Massachusetts law. Investigators interviewed victims, usually business people, who made donations to a charity based on the representations of a solicitor. In some instances, solicitors posed as law enforcement or other public officials or otherwise misrepresented themselves or the charities' purpose. Investigators worked with local police departments, district attorneys and neighboring state attorneys general in locating "couriers" who picked up donations. The Division's financial investigators reviewed and audited books, records and financial reports of many non-profit organizations.

Regulated Industries

Investigators continued to work with PPB and RID attorneys to review and investigate businesses and organizations that withheld from employees contributions for health insurance premiums, but failed to actually purchase the health insurance coverage. Other cases investigated included the mishandling of premiums by an insurance broker, the sale of fraudulent or costly life insurance and other policies to the elderly, and the failure to provide auto insurance coverage by a car rental agency.

Division investigators concluded their participation in an office working group assigned to investigate allegations of discriminatory redlining by the insurance industry in the sale of homeowners insurance, which resulted in the issuance of a special report on the results of that review.

Bureau Prosecutor

Investigators worked with the Bureau prosecutor on numerous cases which resulted in indictments against individuals for violations of the Commonwealth's consumer, charitable and insurance laws. Cases included larceny against the elderly and vulnerable by financial advisers, attorneys, home improvement contractors and auto dealers. Cases also involved investigations relative to the unlicensed practice of medical professions, health care fraud, illegal charitable fundraisers and embezzlement from non-profit organizations.

The Division also continued to play a key role in the Human Services Institutional Abuse project within PPB. Investigators interviewed victims and witnesses and collected documentary evidence. In several cases, guilty verdicts were obtained for rape and assault and battery on clients of human service agencies.

GOVERNMENT BUREAU

Environmental Protection

The Division's role in EPD cases primarily involved locating and identifying assets of potentially responsible parties liable for paying costs incurred by the Commonwealth in the clean-up of polluted or hazardous waste sites. Investigators also located former employees and officers of defunct companies responsible in part for such violations, and reviewed, evaluated and analyzed financial documents and prepared ability to pay analyses.

Trial

The Division played a major role in tort actions filed against the Commonwealth by investigating allegations of abuse, mistreatment and deaths of clients in state care; alleged wrongful termination of state employees; and, personal injuries and other damages which occurred on state-owned property and/or in accidents on state roads or involving state cars. The Division also investigated cases involving contract disputes and eminent domain proceedings.

CRIMINAL BUREAU

Safe Neighborhood Initiative (SNI)

The Division continued its assistance to the office's Abandoned Properties project by conducting research on target properties primarily to determine the status of ownership and existence of encumbrances of the buildings, and also in some instances, assisted in inspecting properties scheduled for renovation.

FAMILY & COMMUNITY CRIMES BUREAU

Victim Compensation & Assistance

In Fiscal Year 1996, Division investigators assisted the VCAD in disposing of all outstanding, court-based cases. A total of 350 cases were completed by Division staff to eliminate an existing backlog of approximately 1000 cases.

BUSINESS & LABOR PROTECTION BUREAU

Insurance Fraud Division

In conjunction with the protocols established by the Attorney General's Task Force to Reduce Waste, Fraud and Abuse in the Workers' Compensation System, the Division continued to investigate allegations that state employees or employees of self-insured companies were fraudulently receiving workers' compensation benefits or other insurance benefits.

Investigators worked with the Insurance Fraud Bureau of Massachusetts in a joint effort to investigate instances of premium avoidance by employers attempting to defraud insurers of premiums owed for workers' compensation coverage.

STATISTICS

The Division opened 474 investigations in Fiscal Year 1996, with 275 investigations ongoing as of June 30, 1996. Case distribution by division and/or bureau is as follows:

DIVISION/BUREAU	OPENED DURING FY '96	ONGOING AS OF 6/30/96
Consumer Protection/Antitrust	62	41
Civil Rights	24	13
Public Charities	5	5
Regulated Industries	11	4
PPB/Criminal	22	28
Government	2	1
Environmental Protection	23	8
Trial	323	171
Insurance Fraud	2	4
TOTAL	474	275

**PUBLIC PROTECTION BUREAU
CRIMINAL DIVISION**

The Criminal Division of the Public Protection Bureau prosecutes criminally a myriad of crimes related to the priority areas of the Bureau. The Division enables the Bureau to have the unique capability of protecting the public through both civil and criminal enforcement mechanisms. Assistant attorneys general bring criminal cases in the District and Superior Courts throughout the Commonwealth as well as conduct ongoing investigations, all under the supervision of the Chief Prosecutor.

Substantive target areas for criminal focus continue to include consumer-related crimes, elder fraud, health care fraud, fraudulent charities solicitations, abuse of disadvantaged populations by staff members, and unauthorized practice of certain professions.

I. DISPOSED IN COURT (22)

JONDLE,Paul	Brownsberger/Bigelow	Plea 6-24-96
Mgd Medical	Crimmins/Hollingsworth	Suffolk Superior
QUERESHI,Z.		

Prosecution of Malden chiropractor and his company along with a businessman from New York for health care fraud under c.175H and larceny.

JONDLE - nolle prosequi	
MANAGED MEDICAL -	Guilty \$1000 fine \$1007 restitution
QUERESHI -	Guilty \$1000 fine \$9000 restitution

JONDLE, P.	Brownsberger	Plea on 6-24-96
	Crimmin	Malden Dist Ct

Prosecution for unauthorized practice by a Malden chiropractor.
Guilty \$1000 fine and 150 hours of
Community service.

TILTON, J.	Cooper	Plea on 6-18-96
		Lawrence Dist Ct.

Prosecution of Methuen man for stealing money from a mentally-retarded man through several schemes.
Continued without a Finding for one year.

MOLLOY,V	Cooper	Plea on 5-07-96
	Butler	Middlesex Superior

Prosecution of a lawyer for stealing money from two different clients; one is an auto claim and one is an estate. Case was combined from two counties.
Guilty 2 ½ years in the House of Correction,

with 9 months to serve, balance suspended for
5 years with restitution of \$61,500 and no
positions of fiduciary responsibility.

FARRIER, R.	Martinez Dale/Russo	Plea on 4/2/96 Norfolk Superior
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Prosecution of a home improvement contractor for taking money from elders after promising to renovate their homes and doing little or no work. We combined cases from Plymouth, Norfolk and Middlesex counties for a plea.
Guilty one year to serve in the House of Correction, to be followed by 4-5 years MCI Cedar Junction suspended for 3 years with

- A) restitution of \$207,573
- B) no elders as clients
- C) no positions as a fiduciary
- D) no contact order with witnesses
- E) substance abuse treatment

WARD, George	Brownsberger O'Connell	Plea 3-4-96 Middlesex Superior
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Prosecution of a home improvement contractor for taking money from elders after promising to renovate their homes and doing little or no work. The defendant is doing New Hampshire time for the same thing.

Guilty 3-5 years, one year to serve from and after
New Hampshire sentence now serving, balance
suspended for 3 years. On Count 2, 3-5 years
suspended from and after Count 1 for 3 yrs.

SOARES, Phoebe	Carriker Ormond	Plea 2-7-96 Suffolk Superior
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Prosecution of a former executive director of a charity for stealing the charity's money.

Guilty 2 years House of Correction, suspended for 2
years with \$19,262 restitution, and 200 hrs comm serv,
no position of financial responsibility

SMITH, Kevin	Martinez Stone	Plea 1-24-96 Cambridge Jury 6
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Prosecution of a DMR staff member for physically abusing a patient.
Guilty 2 yrs probation w/conditions

EDWARDS, C.	Cooper	Plea 1-24-96 Woburn Dist Ct
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Prosecution of an unlicensed dental hygienist.
Guilty 1 year probation w/conditions

WILKINS, C.	Whalen Stone	Plea 1-17-96 Middlesex Superior
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Prosecution of a van driver for sexual assault of a female DMR client.

Guilty 5-7 years at MCI Cedar Junction with

1 year to serve, balance suspended for 5 years
with conditions

FORGIONE, Fred	Brownsberger Ormond	Plea 1-5-96 Suffolk Superior
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Prosecution of a defendant for taking money from an elderly man using several larcenous schemes.

Guilty One year House of Correction to serve,
balance suspended for 1 year

GALENA, F	Brownsberger Crimmins	Disposition 1-2-96 Suffolk Superior
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Prosecution of individuals for health care fraud using c. 175H.

Nolle prosequi filed and a civil consent judgment,
a ban, and contribution to the local aid fund

SHERMAN, M.	Gilfix-Glick Stone	Disposed 12-11-95 Chicopee Dist Ct.
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Prosecution of a staff member for physically abusing a DMR staff member.
Pre-Trial probation for 6 months

CARABBA, R.	Martinez Stone	Disposed 11-13-95 Fitchburg Dist Ct
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Prosecution of a staff member for physically abusing a DMR patient.

Continued Without a Finding for 18 months
with condition that he not work with mentally
retarded persons

GREANEY, C.	Meiklejohn Stone	Disposed 11-8-95 Wareham Dist Ct
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Prosecution of unauthorized practice of nursing.

Continued Without a Finding for 1 year

KINGSTON,Paul	Brownsberger/Bigelow	Plea 11-13-95
JACKSON,Bruce	Crimmins	Suffolk Superior
MDG		

Prosecution of health care fraud under c. 175H and larceny.
MDG - fines, restitution and community service
Jackson & Kingston - dismissed criminally
Civil consent judgments

ZORILLA, M.	Cooper	Plea 7-13-95.
	Tpr Brooks	Lynn Dist Ct

Prosecution of unauthorized dentistry
Continued Without a Finding for 1 year with condition she may not practice

II. INVESTIGATIONS CLOSED WITHOUT COURT ACTION (33)

III. REFERRALS to PPB/CRIMINAL (123)

-- received from other parts of the office, from outside state agencies such as Boards of Registration, local police, individual consumers, attorneys, public officials, etc.

July '95	10
August	6
September	14
October	6
November	10
December	16
January	11
February	8
March	17
April	9
May	7
June '96	9

-- this total of 123 referrals to the Division is an increase from the prior year's total of 71.

IV. OTHER DIVISION ACTIVITIES

Chief Prosecutor Crispin Birnbaum was appointed as a member of the Massachusetts Bar Association's Criminal Justice Section Council. She has also assisted in training programs for the Flaschner Judicial Training Institute, the Harvard Law School Trial Advocacy Program, the MBA, the MCLE, and the Executive Office of Elder Affairs. Ms. Birnbaum also serves as a member of the OAG Race and Ethnic Bias Task Force.

The Division has an ongoing joint investigation with the U.S. Attorney's Office and F.B.I. which may result in both state and federal charges.

Ongoing efforts at bureau-wide criminal training have included programs for attorneys and investigators. We also attend the training programs sponsored by the Criminal Bureau.

The Bureau continues to send assistants to the District Court rotation program which enables them to gain valuable courtroom experience to bring back to the criminal cases in the Bureau.

In conjunction with the CID, the Division now has use of a secure evidence room. We have also created a Criminal Resource Library, located in the Chief Prosecutor's Office. The library includes criminal law books, as well as notebooks with samples of memos and motions, etc.

GOVERNMENT BUREAU

The Government Bureau provides representation for the Commonwealth and its agencies and officials in all types of civil litigation and for employees of the Commonwealth with respect to certain civil claims made against them resulting from the performance of their duties. The Bureau also provides advice and consultation to officials with respect to legal issues arising in connection with their official functions, particularly in instances where such advance consultation may serve to prevent unnecessary litigation.

As in previous years, the Bureau in fiscal year 1996 continued and expanded its efforts to develop and maintain close working relationships with agency counsel and to provide them with information and advice on matters of broad common interest. A meeting with all agency general counsel was held in February, 1996. In February, 1996 we published the sixth issue of the Agency Counsel Newsletter, containing reports on legal developments in areas of relevance to agencies of the Commonwealth generally.

The Government Bureau consists of an Administrative Law Division, a Trial Division and an Environmental Protection Division. During fiscal year 1996, five attorneys were assigned permanently to work in more than one division, and we continued to assign a sampling of cases from each division to attorneys in the others, so as to broaden the exposure of the attorneys in both to the full range of cases the three divisions handle. In addition, a number of particularly complex and significant cases were handled by teams without regard to division boundaries.

Both the Administrative Law Division and the Trial Division initiate affirmative litigation on behalf of state agencies and the Commonwealth and submit briefs amicus curiae in cases presenting issues of law affecting the Commonwealth's interests. The Administrative Law Division defends suits concerning the legality of governmental operations, particularly those seeking injunctive or declaratory relief. The Division is also responsible for legal review of all newly enacted town by-laws and for preparation of legal opinions for constitutional officers, heads

of agencies, and certain other officials concerning issues arising from the performance of their official duties. The Trial Division defends suits seeking damages or other relief for alleged wrongful acts of government officials or employees, particularly contract-related disputes, real estate matters, torts, civil rights violation, employment discrimination, and environmental damage claims. Where statutorily required, the Trial Division also reviews certain contracts, leases, bonds, and various conveyancing documents submitted by state agencies for approval as to form. The Environmental Protection Division represents the Commonwealth's environmental agencies in affirmative litigation to enforce environmental laws and in defensive litigation challenging those agencies' regulatory and enforcement activities.

Affirmative Litigation

As affirmative litigation, the Government Bureau, in conjunction with the Consumer Protection and Antitrust Division, filed a landmark lawsuit against the five major cigarette manufacturers and several related entities to recover the Commonwealth's health care and other expenditures for smoking-related diseases, including expenditures in the state Medicaid program. Commonwealth v. Philip Morris, Inc., et al. The suit alleges, among other things, that the cigarette companies and their trade associations are engaged in a conspiracy to mislead the Commonwealth and its citizens concerning the addictiveness of nicotine in cigarettes and the adverse health effects of smoking. The suit also seeks injunctive relief to, among other things, compel the disclosure of cigarette industry research on smoking, health and addiction and to require cigarette industry funding of a "corrective" public education campaign. In an historic agreement reached in March 1996, one of the defendants, the Liggett Group, settled the claims against it in this action and in similar actions filed by four other states. Among other things, Liggett agreed to pay these states 2.5 percent of its pretax income for a period of 25 years and to accept a number of significant restrictions on its cigarette advertising intended to minimize the effect of the advertising on children and teenagers.

In addition to the cigarette litigation, the Government Bureau maintained an active docket of affirmative litigation in fiscal year 1996 to assert the interests of its state agency clients. In Commonwealth v. Federal Deposit Insurance Corporation, the United States District Court ruled that the Commonwealth is precluded by federal law from filing deposit insurance claims with the FDIC on behalf of the owners of bank deposits that are deemed abandoned under state law, thus precluding the state Treasurer's claims for millions of dollars in abandoned deposits. In Michigan, et al, v. United States Department of Energy, et al., the Commonwealth participated with other states in an action in which the United States Court of Appeals for the District of Columbia Circuit ruled that the United States Department of Energy is obligated under the federal Nuclear Waste Policy Act to accept high-level nuclear waste, currently stored on site at nuclear reactors throughout the nation, for storage in a central repository by 1998. In Massachusetts Low Level Radioactive Waste Management Board v. United States Department of Energy, the United States District Court ruled that the Massachusetts Low Level Radioactive Waste Management Board did not timely meet one of the "milestones" under federal law for the disposal of low level radioactive waste and therefore could not collect certain surcharges that had been paid by waste generators. In Treasurer v. Middlesex County, the Superior Court ruled that the county must pay assessments made by the state Treasurer to cover certain costs incurred by the Public Employee Retirement Administration in its supervision of the Middlesex County Retirement System. In Commonwealth v. Unisys Corporation, the Bureau filed suit and obtained preliminary relief on behalf of the Secretary of State against Unisys Corporation over defects in its design and implementation of a statewide computer system for management of voter registration records. In Commonwealth v. TLT Construction Co., the Bureau commenced an action on behalf of the Trial Court and the Division of Capital Planning and Operations to recover damages from the contractor, architect and others responsible for defects in the design and construction of the renovation of the exterior of the Suffolk County Courthouse.

Amicus Curiae Briefs

The Commonwealth's position was adopted by courts in a number of important cases in which Government Bureau attorneys filed amicus briefs. In Moakley v. Eastwick, the Supreme Judicial Court held that the Art Preservation Act does not apply to work completed before the effective date of the Act. In Doe v. Superintendent of Schools of Worcester, the court upheld the school superintendent's authority to expel a student for one year for violation of the school's weapons policy. Curtis v. School Committee of Falmouth, the Supreme Judicial Court held that a condom availability program in the public schools did not violate the parents' liberty interests or their rights to free exercise of religion.

THE ADMINISTRATIVE LAW DIVISION

The Administrative Law Division has four functions:

(1) defense of lawsuits against state officials and agencies concerning the legality of governmental operations, particularly those seeking injunctive or declaratory relief; (2) initiation of affirmative litigation on behalf of state agencies and the Commonwealth; (3) legal review of all newly enacted town by-laws; and (4) preparation of legal opinions for constitutional officers, heads of agencies, and certain other officials concerning issues arising from the performance of their official duties. During fiscal year 1996, significant events occurred in each of these areas.

During fiscal year 1996, the Division opened 1,452 cases and closed 1,569 cases. Cases handled by Division attorneys resulted in 33 reported decisions of the Supreme Judicial Court, 15 reported decisions of the Massachusetts Appeals Court, 5 reported decisions of the United States Court of Appeals for the First Circuit, 2 reported decisions of the United States District Court for the District of Massachusetts, and 1 reported decision of the United States Bankruptcy Court for the District of Massachusetts. As well, Division attorneys were involved in many cases in those courts and in the state trial courts that resulted in unpublished decisions.

1. Defensive Litigation.

The Division spent significant time and resources in fiscal year 1996 defending the Commonwealth's administration of federal and state welfare programs. Most significantly, in Massachusetts Coalition for the Homeless v. Secretary of EOHHS, the Supreme Judicial Court held that the Department of Transitional Assistance did not violate federal or state law in declining to use Emergency Assistance funds to enable homeless AFDC families to live in homelike settings. In Pyfrom v. Commissioner of DPW, the Appeals Court held that the Department of Public Welfare erred in terminating AFDC benefits to a mother who continued to be substantially involved in her child's life after the child was placed in the temporary custody of the father.

In other significant litigation involving children and families, the Supreme Judicial Court held, in Gray v. Commissioner of Revenue, that the Department of Revenue could seize a father's assets to satisfy his child support arrearages, despite the fact that the father was in compliance with a payment schedule previously ordered by the Probate Court. In Care & Protection of Edith, the Supreme Judicial Court vacated a District Court gag order enjoining a father from discussing his child's care and protection case with the media on the grounds that the order constituted prior restraint of the father's free speech rights and was not justified by any compelling state interest. In Care and Protection of Vivian, the Supreme Judicial Court held that the federal Parental Kidnapping Prevention Act preempted a nonemergency order in a state care and protection proceeding.

The Department of Correction's implementation of a new system for monitoring prisoners' telephone calls provoked litigation in both state and federal courts. In Caciccio v. Secretary of Public Safety, the Supreme Judicial Court upheld the validity of the regulations permitting monitoring and recording of inmate telephone calls as justified by valid penological interests and not unconstitutionally impinging on inmates' rights of access to courts and counsel or free speech and expression. However, in Langton v. Hogan, the United States Court of Appeals

for the First Circuit held that application of these regulations to particular inmates was barred, in part, by a previously entered consent decree.

The Division also handled a large number of appeals arising from the grant or denial of unemployment compensation benefits. In Thomas O'Connor & Co. v. Commissioner of Employment & Training, the Supreme Judicial Court upheld DET's decisions, in two cases involving the same employer, that positive drug tests of a job applicant and employee were not sufficient grounds to establish a violation of the employer's policy, for purposes of denying unemployment benefits. Other unemployment cases decided during fiscal year 1996 included LeBeau v. Commissioner of DET, in which the Supreme Judicial Court held that a claimant who voluntarily requested a leave of absence was not entitled to unemployment compensation after she changed her mind and unsuccessfully sought to return to her job; White v. Commissioner of DET, in which the Appeals Court held that a lump-sum payment to a laid-off employee, which was made in return for the employee's release of all claims against the employer, was not remuneration that would disqualify the employee from receiving unemployment benefits; Russo v. Commissioner of DET, in which the Appeals Court held that an employee could receive training benefits in the same year in which he was also receiving federal unemployment benefits; Khodaverdian v. DET, in which the Appeals Court held that an employer had good cause for failing to file a timely request for separation and wage information; and Still v. Commissioner of DET, in which the Appeals Court held that a nursing home employee's conduct in swearing at a patient did not constitute a knowing violation of a work rule, for purposes of disqualifying the employee for receipt of unemployment benefits. The Supreme Judicial Court granted our petition for further appellate review in the Still case.

Tax cases decided this year included Commissioner of Revenue v. Houghton Mifflin Co., in which the Supreme Judicial Court upheld the Appellate Tax Board's grant of an abatement on the ground that a book publisher is a "manufacturing" company for purposes of eligibility for an

investment tax credit; Cooper v. Commissioner of Revenue, in which the Supreme Judicial Court upheld, as nondiscriminatory, the denial of an abatement of state income tax paid on military pension benefits; Leger v. Commissioner of Revenue, in which the Supreme Judicial Court held that imposition of a tax lien before a judicial hearing did not violate the taxpayer's due process rights; and Minkin v. Commissioner of Revenue, in which the Appeals Court reversed an Appellate Tax Board decision and held that trusts are not separate entities apart from their shareholders for purposes of state taxation.

In two cases handled by the Administrative Law Division the appellate courts held that the assessments in question constituted legitimate fees, rather than illegal taxes. In Nuclear Metals, Inc. v. Low-Level Radioactive Waste Management Board, the Supreme Judicial Court upheld the assessment of a fee against producers of low-level radioactive waste but found that the amount of the fee had been improperly calculated. In Baker v. DEP, the Appeals Court upheld the validity of fees filed with notices of intent to develop wetlands in light of the particular benefit to landowners on whom the fees are assessed and evidence that the aggregate revenue from fees was less than the actual costs associated with the administration of the Wetlands Protection Act.

Disputes as to eligibility for and calculation of retirement benefits also provoked a significant amount of litigation during fiscal year 1996. In appeals from decisions of the Contributory Retirement Appeals Board, the appellate courts held that a teacher's out-of-state compensation could not be used in calculating retirement benefits (Leary v. CRAB); that an employee's premature withdrawal of retirement deductions, during a period when the employee was also receiving a lump-sum settlement of her workers' compensation claim, did not result in the loss of membership in the retirement system (DiNatale v. CRAB); that a professor who was injured in a fall while returning to her office after lunch at the college cafeteria was not injured while in the performance of her duties and therefore was properly denied accidental disability retirement benefits (Namvar v. CRAB); and that a teacher who was laid off prior to 1979, was

reemployed after 1979, and had repaid all withdrawn retirement deductions with interest was not required to contribute an additional two percent of her salary over \$30,000, as required of teachers first hired after 1979 (DiGianni v. CRAB).

In other retirement-related cases, the Appeals Court held that a retiree was not entitled to veterans' retirement benefits because he did not meet the statutory criterion of working for the city twice as long as he was not in its employ (Nyhan v. Board of Retirement); and the Supreme Judicial Court held that a Probate Court order requiring the State Retirement Board to establish an account in favor of the former wife of a retiree was beyond the scope of the Board's statutory authority and was therefore unenforceable (Early v. State Board of Retirement). The United States Court of Appeals for the First Circuit held, in EEOC v. Massachusetts, that a Massachusetts statute preventing state and local employees hired after age 65 from participating in any public employee retirement system violated the federal Age Discrimination in Employment Act. In Riva v. Massachusetts, the First Circuit held that plaintiffs who began receiving retirement benefits prior to the effective date of the Older Workers Benefit Protection Act were precluded by the nonretroactivity provision of that Act from challenging a Massachusetts statute reducing retirement benefits of employees with less than 10 years of service who were over 65 when they began receiving accidental disability benefits.

The Administrative Law Division handles a variety of healthcare-related cases, several of which were decided this past year. In Rate Setting Commission v. Baystate Medical Center, the Supreme Judicial Court held that the Division of Administrative Law Appeals ("DALA") had jurisdiction to hear a hospital's appeal from the Rate Setting Commission's rate determination and remanded the case to DALA to take additional evidence as to costs related specifically to Medicaid patients. In another Medicaid case, Mansfield v. Commissioner of DPW, the Appeals Court held that the Department of Public Welfare's approval of services provided by a private provider of personal care services was sufficient "state action" to entitle the recipient to a due process hearing

prior to reduction in such services. In two cases the Supreme Judicial Court upheld disciplinary actions taken against psychiatrists by the Board of Registration in Medicine: In Aronoff v. Board of Registration in Medicine, the Supreme Judicial Court upheld the Board's suspension of a psychiatrist who participated in commercial transactions with a patient during the course of her treatment; and in Sugarman v. Board of Registration in Medicine, the Supreme Judicial Court upheld the suspension of a psychiatrist who violated a court-imposed gag order in a child custody case in which the psychiatrist was an expert witness.

The appellate courts decided several cases this year involving the scope of administrative and judicial review of employment actions affecting civil service employees. In Bielawski v. Personnel Administrator, the Supreme Judicial Court clarified the limited scope of judicial review under G.L. c. 249, § 4, and held that a civil service employee has no property interest in promotion. In two other civil service cases, the Appeals Court held, in Police Commissioner v. Civil Service Commission, that the Civil Service Commission improperly substituted its judgment for that of the police commissioner in modifying a disciplinary sanction, and, in Police Commissioner v. Personnel Administrator, that the Superior Court exceeded the scope of judicial review by reversing a decision of the Personnel Administrator that a police officer's failure to provide proper notice of her absences was reasonable under the circumstances. The Supreme Judicial Court granted further appellate review in the latter case.

This year, the federal courts decided two employment discrimination cases handled by Administrative Law Division attorneys. Most significantly, in Chaulk Services, Inc. v. MCAD, the United States Court of Appeals for the First Circuit held that an employee's administrative sex discrimination claim was preempted by the National Labor Relations Act, because the claim arose from the same facts that provided the basis for an unfair labor practice charge brought on her behalf before the National Labor Relations Board, and that the District Court therefore erred in abstaining, under the Younger doctrine, from assuming jurisdiction over this case. The United

States Supreme Court denied our petition for certiorari in the Chaulk case. In McDonald v. Massachusetts, the United States District Court for the District of Massachusetts dismissed, for failure to state a claim, an employee's claim that the Commonwealth's failure to grant his worker's compensation claim violated various state and federal statutes prohibiting handicap discrimination.

Two first amendment cases decided this year were Volin v. Board of Public Accountancy, in which the Supreme Judicial Court upheld, against a first amendment challenge, restrictions on advertising by unlicensed accountants; and Boston Herald, Inc. v. Superior Court Department of the Trial Court, in which the Supreme Judicial Court opined that the public, via the media, has a right of access to arraignments held outside of a courthouse, absent an overriding interest in closure, and that any closure must be narrowly tailored to serve such interests.

Other significant cases handled by the Division that were decided this year include Anderson v. Attorney General, in which the Supreme Judicial Court upheld the Attorney General's refusal to certify an amendment to an initiative petition that would have materially changed the substance of the initiative; County of Barnstable v. Commonwealth, in which the Supreme Judicial Court held that counties could be required to contribute to the costs of courthouse maintenance where the Legislature had refused to appropriate sufficient funds for that purpose and that the court's inherent power did not extend to remedying past shortfalls in such appropriations; and Abdullah v. Commissioner of Insurance, in which the United States Court of Appeals for the First Circuit upheld the constitutionality of a state statute requiring the Commissioner to set automobile insurance rates based, in part, on the geographical territory where the automobile is kept.

Municipal Law

The Attorney General's Office is required by statute to review and approve town by-laws and amendments to home rule charters. In addition, the Attorney General's Office reviews and comments on any inconsistencies between state law and proposed home rule charters and charter revisions. These reviews are performed by attorneys in the Municipal Law Unit within the

Administrative Law Division of the Government Bureau, with the assistance of attorneys from every other bureau in the Attorney General's Office.

During fiscal year 1996 the Municipal Law Unit reviewed 1,462 by-laws and 38 home rule charters, charter revisions, and charter amendments. The Attorney General's Office approved 1,363 submissions, 93 percent of the total, in whole or in part. The by-laws reviewed included 584 general by-laws and 878 zoning by-laws.

Zoning by-laws strike the balance between a property owner's right to use and enjoy private property and a municipality's exercise of police power to regulate structures and uses of land for the common good. During the past year local attempts to regulate so-called "adult" uses were very common. Many towns adopted or revised "planned" or "cluster" zoning to attract but control growth. Several communities, apparently faced with booming populations, chose to adopt "phased development" by-laws to slow down new residential construction. Also popular were by-laws protecting water resources such as aquifers and well sites.

General by-laws pertain to town governance and the exercise of municipal power. In the area of general by-laws, regulation of "details" received attention from several communities. The most frequent local choice was to allow police to perform all details. However, some municipalities now allow private flaggers at road construction sites. Juvenile curfews, limitations on canvassing and soliciting, and loitering were subjects of by-laws approved by several towns. Local by-laws limiting the sale and use of tobacco were enacted in every corner of the Commonwealth. Many towns adopted or amended general by-laws regulating wetlands.

In addition to reviewing by-laws, the Municipal Law Unit publishes the semiannual Municipal Law Newsletter and responds to telephone calls and information requests from town officials and residents, legislators, reporters and state agencies. Attorneys from the Municipal Law Unit spoke at meetings of associations of town clerks, town counsel, and town planning and zoning boards.

Opinions

The Attorney General is authorized by G.L. c. 12, §§ 3, 6, and 9, to render formal opinions and legal advice to constitutional officers, agencies and departments, district attorneys, and branches and committees of the Legislature. Formal, published opinions are given primarily to the heads of state agencies and departments. Less formal legal advice and consultation is also available from the Opinions Coordinator, as is information about the informal consultation process. The questions considered in legal opinions must have an immediate concrete relation to the official duties of the state agency or officer requesting the opinion. Hypothetical or abstract questions, or questions which ask generally about the meaning of a particular statute, lacking a factual underpinning, are not answered.

Formal opinions are not offered on questions raising legal issues that are the subject of litigation or that concern ongoing collective bargaining. Questions relating to the wisdom of legislation or administrative or executive policies are not addressed. Generally, formal opinions will not be issued regarding the interpretation of federal statutes or the constitutionality of enacted legislation.

Formal opinion requests from state agencies that report to a cabinet or executive office must first be sent to the appropriate secretary for his or her consideration. If the secretary believes the question raised is one that requires resolution by the attorney general, the secretary then requests the opinion.

During fiscal year 1996, the Attorney General issued one formal Opinion, which concerned the implementation of enhanced 911 telephone service. An additional 79 requests were either resolved or declined informally.

THE TRIAL DIVISION

In fiscal year 1996, the Trial Division continued to implement a number of initiatives to improve the efficiency and quality of its legal representation. For instance, the Division continued

to place strong emphasis upon early evaluation of cases for settlement, disposition by motion, or full litigation. This emphasis has reduced the amount of resources spent on cases that ultimately will not go to trial. The Division also created seven practice groups to assist attorneys in developing and sharing expertise through training sessions, creation of manuals and model pleadings, and hosting outside speakers. The seven groups, which cover the major areas of the Division's practice, include Torts, Civil Rights, Employment, Contracts, Real Estate, Environmental and Federal Courts. Each division attorney handles cases in more than one of the subject matter areas, under supervision of more experienced attorneys where necessary.

The Division opened 347 cases during the fiscal year, and closed 408. At the end of the fiscal year, 1409 cases were pending. The Division received 219 contracts from state agencies for approval as to form, of which it approved 185 and rejected 28 and had 6 pending at the end of the fiscal year.

Cases involving state contracts continued to provide a significant part of the caseload, as major public construction projects proceed. The Division resolved forty-one contracts cases and received 46 new cases during the year. At the end of the year, there were 232 contracts cases pending, representing a total dollar exposure to the Commonwealth of approximately \$ 30 million.

Many of the contracts cases involved major initiatives of state government. In Converse Construction Co. v. Massachusetts Highway Department, the United States District Court denied a preliminary injunction that would have prevented implementation of the Commonwealth's program for ensuring that a portion of subcontracts on construction projects are awarded to minority and women-owned businesses. Suffolk Superior Judge Garsh allowed summary judgment in UCANE v. Commissioners of the Department of Public Works, upholding the legality of a project labor agreement ("PLA") on the Central Artery/Tunnel Project.

Division attorneys also appeared before the appellate courts in contract matters. The Supreme Judicial Court in Champigny v. Commonwealth, construed a legislative Resolve broadly

to compensate a business for its loss. The Appeals Court in Machado v. Committee for Public Counsel Services held that G.L. c. 211D, § 12, requiring CPCS to process bills within thirty days, does not give rise to a private action for contract damages. The court also ruled that attorneys do not qualify as "commercial vendors" eligible for late payment interest under G.L. c. 29, § 29C.

Many contract cases involved potential delay in state construction projects due to preliminary injunction motions arising out of bid disputes. Roads Corp. v. Commonwealth, (denying a losing bidder's motion to enjoin the Massachusetts Highway Department from awarding a contract to the apparent low bidder, whose submitted bid included a subcontractor that was no longer certified as a Disadvantaged Business Enterprise); GVW, Inc. v. Division of Capital Planning and Operations, (denying the plaintiff's motion to enjoin DCPO from awarding the contract to another bidder); Pavao Construction v. Massachusetts Highway Department, (denying a losing bidder's motion to enjoin MHD from awarding a contract to the low bidder that had cured a good faith error in compliance with DBE requirements); ASEC Corp. v. Massachusetts Highway Department (MHD did not have the discretion to waive discrepancies in bid documents where those discrepancies indicate a "disdain for honesty and a complete lack of integrity"); Environmental Waste Technology v. Massachusetts Highway Department (seeking to enjoin the award of a \$2.8 million contract for emergency response services for unexpected environmental hazards at CA/T sites); Ami Municipal Vehicles Division of Natick Auto Sales, Inc., v. Commonwealth (denying a losing bidder request for preliminary relief based upon claims that the pending purchase by the State Police of 250 new police vehicles was illegal).

In addition to litigation, the Trial Division advises state agencies and officials on contract issues, including questions concerning the formation of contracts, performance, bidding procedures, bid protest, contract contents, contract interpretation and other matters. During the year, the Division implemented a policy of reviewing contracts only when approval of the Attorney General is legally required. The most frequent requests reviewed during the fiscal year

concerned compliance with the bid laws and rights and remedies of the Commonwealth and other parties in the event of failure to perform contractual obligations. Requests for advice and assistance came from the Massachusetts Highway Department, Metropolitan District Commission, Executive Office of Transportation and Construction, Higher Education Coordinating Council, Department of Mental Health, Department of Mental Retardation, Department of Environmental Management, State Lottery Commission, Department of Transitional Assistance and Division of Capital Planning and Operations.

In the area of torts and civil rights, the Division opened 233 cases and closed 242. Most of the new cases (203) involved allegations of negligence by state agencies or employees. Twenty-nine new civil rights and intentional torts cases were opened.

Eight torts or civil rights cases went to trial before a jury. In Burton v. Commonwealth, a jury found for the Commonwealth on a negligence claim brought by a passenger in a truck that crashed, after a high speed chase by the State Police and Braintree Police. The jury returned a verdict for the Commonwealth in a claim brought by a recreation coordinator, employed by an independent contractor, who slipped and fell and suffered a knee injury while supervising and participating in an athletic activity in a DYS facility in Barba v. Commonwealth. In Walraven v. Commonwealth, the jury found for the Commonwealth in a personal inquiry action arising out of a slip and fall on a state owned parking lot. The plaintiff in Grant v. McLaughlin, claimed that a Registry of Motor Vehicles police officer used excessive force when he attempted to place him under arrest. A jury determined that the officer did commit assault and battery, but awarded only one dollar in damages. The plaintiff in Manchester v. Commonwealth, Bristol Superior, contended that her fall occurred because she followed her instructor, who warned the class to stay together as protection against campus assaults, across unplowed snow. The jury returned a verdict for the defendant. After a three day trial in Hunt v. Commonwealth in Brockton before Judge Donovan, during which the Commonwealth conceded liability in an automobile accident, the jury

awarded the plaintiffs a combined total of \$18,000. The jury awarded the plaintiff, a concert violist, in Adams v. Bridgewater State College \$1,373,108, which was reduced to the \$100,000 statutory limit. After trial in Sherwood v. Commonwealth, a jury awarded the plaintiff \$82,000 in an automobile accident case. His wife and two minor children were awarded \$12,000 and \$10,000, respectively.

Consistent with the division's policy favoring early resolution of cases, many cases were resolved by motion before trial, including, among other cases: Diviacchi v. Board of Bar Overseers (members of the Board were entitled to prosecutorial immunity from monetary damages arising out of the Board's investigation of a complaint against the plaintiff by a former client); Signal Corp. v. Nage (statements by the Chair of the House Post Audit Committee were not defamatory); Canney v. City of Chelsea (the defendants are state officials under the Chelsea Receivership Act, so that claims against them in their official capacity were subject to dismissal); First Financial Insurance Co. v. Massachusetts National Guard (the Commonwealth was covered under an insurance policy for injury sustained by a spectator at the Anniversary Celebration of the Massachusetts National Guard); Williamson v. Fitchburg State College (allowing motion to dismiss on all intentional tort counts against the Commonwealth on the grounds that is immune from liability for the professor's intentional acts); Gagnon v. Commonwealth (allowing motion to dismiss on the grounds that the amendments to the sexually dangerous persons statute did not violate the plaintiffs' rights to equal protection or due process and did not constitute ex post facto laws); Raisman v. Commonwealth (granting motion for summary judgment, holding that the open-ended indemnification provision between the defendants violated Amendment Article 62 of the Massachusetts Constitution); Howard v. Commonwealth (the exclusion of discretionary functions from the Tort Claims Act under G.L. c. 258, § 10, does not deprive individual defendants of the immunity afforded by § 2); Safety Insurance v. Commonwealth (the opening of

Beldon Bly Drawbridge, which caused a multicar accident, was a road defect that barred all of plaintiff's claims).

Significant settlements in torts cases include Tetiva v. Oleski (two minors and their mother brought an action against the Department of Mental Health and others alleging a therapist engaged in a sexual relationship with the mother of a family he was treating. The claim against the Commonwealth settled for \$65,000; the other defendants paid a total of \$185,000. The claim against the Commonwealth in Kaleski v. Commonwealth was settled for \$25,000.

Division attorneys appeared in the appellate courts in several torts cases. The Appeals Court affirmed the award of summary judgment to Suzanne Bump, former state representative in the defamation case of Benoit v. Bump because the statements at issue were non-actionable opinions based on disclosed, non-defamatory facts. In Goveia v. Westfield State College, a student at the College alleged that she was raped and assaulted in a dormitory by other students as a result of the college's negligence in enforcing its alcohol and security policies. The Appeals Court affirmed the grant of summary judgment to the college based on the discretionary function exception to the Tort Claims Act and the public duty rule.

The Division also appeared in numerous civil rights cases in the federal courts. In the case of McClure v. Bunker Hill Community College, the Federal District Court granted the defendants' motion for summary judgment, finding that the College disciplined the plaintiff based on his own misconduct and that the hearing the College provided to the plaintiff satisfied due process requirements. The U.S.D.C. in Weiner v. Board of Registration of Psychologists allowed the defendants' motion to dismiss on the grounds that the individual members of the Board, who acted in a quasi-judicial capacity, were entitled to absolute immunity from his claims. The court in Robinson v. Divenuti granted our motion to dismiss on Eleventh Amendment grounds.

Employment litigation accounted for 27 new cases. Several cases reached the appellate level, with uniformly successful results. In Hamlin v. Department of Social Services, the

Massachusetts Appeals Court affirmed the award of judgment notwithstanding the verdict to the defendant in this handicap discrimination action because the plaintiff was not a "qualified handicapped person" as that term is defined in chapter 151B. The Supreme Judicial Court denied further appellate review. In Davis v. State Lottery Commission, the First Circuit Court of Appeals upheld the District Court's determination on summary judgment that the plaintiff failed to establish a prima facie case of employment discrimination.

At the trial court level, in Smith, et al. v. Massachusetts Rehabilitation Commission, the U.S. District Court granted our motion for summary judgment based on the plaintiffs' failure to establish a prima facie case and the employer's legitimate nondiscriminatory reason for the adverse employment action. In Fratus v. Department of Education the U.S.D.C. held that the Massachusetts Department of Education was not an "employer" within the meaning of Title VII where it was exercising its regulatory powers to preserve quality vocational education. The Superior Court in Cook v. Commonwealth held that c. 151B is the exclusive remedy for employment-based sexual harassment and that sovereign immunity barred plaintiff's claim against the Commonwealth for damages under the Privacy Act. The division's only employment discrimination trial in fiscal year 1996 (Haddocks v. Department of Mental Health) settled on the fourth day of trial, after plaintiff had rested, for \$105,000 which was roughly equivalent to the claim for back pay.

Trial Division attorneys handled a variety of real estate cases, many of which involved petitions for the assessment of damages resulting from land acquisitions by eminent domain. Sixty-seven new eminent domain cases were opened in the Division in this fiscal year. The Division opened 106 and closed 115 real estate cases. During the fiscal year, the Division disposed of 54 land damage cases, 5 after jury trial and 49 by settlement. The disposition of these cases resulted in savings to the Commonwealth of more than \$ 40 million, which represents the difference between the amounts claimed and the amounts paid.

The Commonwealth's agencies acquire land for numerous reasons, including highway construction, recreation and parks, agricultural and conservation restrictions and easements. When required by statute, Division attorneys provide advice on these and other real estate matters and approve as to form deeds, rental agreements, pro tanto releases, general releases, taking orders and other conveyance documents involving the Commonwealth. Trial Division attorneys also represent the Commonwealth in all petitions for registration of land filed in the Land Court. Agencies involved in such real estate matters include the Massachusetts Highway Department, Metropolitan District Commission, The Department of Environmental Management, the Department of Environmental Protection, the Department of Food and Agriculture, the Department of Fisheries, Wildlife and Environmental Law Enforcement and the Division of Capital Planning and Operations.

Real estate projects also include several special initiatives. In the first proceeding initiated by the Attorney General's Abandoned Housing Task Force, Commonwealth v. Theophile Pierre, Chief Judge Daher of the Boston Housing Court allowed the Commonwealth's petition to enforce the State Sanitary Code and for appointment of a receiver for a Dorchester property located in the C-11 Safe Neighborhood Initiative ("SNI"). The Commonwealth entered into settlement agreements with the new owner of three other Dorchester properties in the C-11 SNI to bring the properties up to code compliance within five months. In another project, the Metropolitan District Commission has identified approximately 80 encroachments on its parkland along the Charles River in Newton, Waltham, and Watertown. These encroachments vary from homeowners extending their lawns to companies having parking lots on state land. Members of the Division, assisted by the Environmental Protection Division, are assisting in the effort to resolve issues raised by the encroachments.

Owners of shoreline property in Hooper v. Town of Rockport, brought a declaratory judgment action in the Land Court to determine whether either the public or the town had a right

to use the Atlantic Path, which crosses their private property. At the Court's invitation, the division filed a motion to intervene on behalf of the public. After trial, the court found that neither the town nor the public has any rights to use the plaintiff's property.

At the appellate level, the Division prevailed in all of its four real estate cases decided during the fiscal year. In Ackerley Communications v. Commonwealth, the court affirmed the lower court's grant of summary judgment for the Commonwealth because the plaintiff held a mere license, which is not compensable under the eminent domain statute. The Appeals Court affirmed summary judgment for the defendants in Samuels v. Executive Office of Transportation and Construction, noting that the plaintiffs failed to produce any evidence that the purchase price was below fair market value. In Nelson v. Commonwealth, an appeal from the dismissal of damages claims based on the destruction of portions of plaintiffs' beachfront after a 1987 storm in Chatham, the court granted our motion for summary disposition and application for attorneys' fees. In Assistant Recorder of the North Registry District of Bristol County v. Spinelli, Individually and as Trustee, the Appeals Court upheld the Land Court's determination that a trust is ineligible for homestead protection, that the Assistant Recorder has standing as "a party in interest," and that the Land Court had authority to correct a certificate of title in order to maintain the integrity and accuracy of registered land records. Assistant Recorder of the North Registry District of Bristol County v. Spinelli. In Langone v. Commonwealth, the state succeeded in a Superior Court eviction proceeding brought against a company that occupied Commonwealth land under construction for the new Suffolk County Courthouse. The Commonwealth prevailed on summary judgment in the Superior Court in Wilson v. Commonwealth, which challenged the state's denial of permits for protective seawalls for waterfront properties in Chatham.

THE ENVIRONMENTAL PROTECTION DIVISION

The Environmental Protection Division (EPD) serves as litigation counsel on environmental issues for various state agencies, particularly those within the Executive Office of Environmental Affairs. EPD handles the Commonwealth's civil litigation to enforce environmental protection programs established by state statutes and regulations, including laws governing air pollution, water pollution, water supply, waterways, wetlands, hazardous and solid waste. Based on the Attorney General's broad authority to protect the environment of the Commonwealth, EPD initiates and intervenes in state and federal litigation, and participates in administrative proceedings before federal agencies on significant environmental issues. EPD defends lawsuits challenging the actions of state environmental agencies and the legality of state environmental laws.

During fiscal year 1996, EPD handled enforcement proceedings leading to judgments requiring future payments to the Commonwealth of \$39,741,253. These are figures for penalties and cost recovery awarded in fiscal 1996, whether or not actually paid in fiscal 1996. Actual payments, received by EPD, in fiscal year 1996, were \$244,920 for civil penalties and \$1,618,369 for hazardous material cost recovery, for a total of \$1,863,289. Other cases resulted in court judgments requiring private parties to undertake costly cleanups--a savings of millions of dollars for the Commonwealth.

I. State Enforcement

One of the most important functions of EPD is to bring litigation to enforce state and federal environmental statutes. In the past fiscal year, EPD handled numerous major enforcement cases, including the following:

A. Air Pollution

Significant air pollution matters during the fiscal year included Commonwealth v. Coastal Oil New England (As part of a consent decree, Coastal will pay a penalty of \$175,000 after

allegedly violating a number of state air pollution laws at its gasoline loading facilities in Revere); Commonwealth v. Gentex Optics, Inc. (An eyeglass lens manufacturer, in Dudley, must pay \$610,000 in penalties and other relief after allegedly releasing high levels of materials that contribute to the formation of smog and the destruction of the upper ozone layer); Commonwealth v. Refrigerator Truck Body, Inc. (We obtained a consent judgment that requires Refrigerator Truck, an auto body shop in Woburn, to control its air emissions, comply with hazardous waste management requirements, cease alleged dumping of solid waste, and pay a \$25,000 civil penalty); Commonwealth v. Parkway Garage and Commonwealth v. Resse's Auto Service Station (We filed consent judgments requiring the defendants to pay \$10,000 in civil penalties for allegedly operating gasoline filling stations without the vapor recovery equipment required under the Clean Air Act); and Commonwealth v. J.J. Barafo Inc., et al. (In this Environmental Strike Force asbestos case, \$26,000 in penalties were paid after pipes allegedly containing asbestos insulation were illegally removed from an industrial building)

B. Water Pollution/Water Supply

The division handled a number of water pollution cases. These include Commonwealth v. Lacet, where the court entered a consent judgment against the owner and operator of a Mattapan auto repair facility that allegedly violated state law by allowing collected gasoline and oil to discharge into the MWRA sewer system, which is connected to Boston Harbor. The judgment requires the defendants to maintain the facility's gasoline/oil separator in good working condition and periodically to report their efforts to the MWRA for compliance review.

In a case filed under the Clean Waters Act, the town agreed to the entry of a final judgment requiring the replacement of failing septic tank systems. Commonwealth v. Town of Essex. The town is also required to eliminate alleged unlawful connections to the town storm drains and implement additional cost-effective means of reducing the level of pollutants in the storm drains. In Commonwealth v. Town of Oak Bluffs and Commonwealth v. Town of Tisbury,

the towns had agreed, in 1994, to the entry of a final judgment in which they were to work together to solve their alleged septage and wastewater problems. Subsequent to the entry of the final judgment, the towns decided not to work together. The towns agreed to the entry of a second modified final judgment that puts the towns on a schedule to solve their own wastewater and septage problems.

In early June, there were alleged raw sewage breakouts occurring at the Heritage Mobile Home Park in Salisbury in violation of the Clean Waters Act and Title 5 of the State Environmental Code. The breakouts were occurring in very close proximity to trailer homes and the street because the leaching field at the trailer park had failed. The owner of the trailer park was allegedly violating orders of the Salisbury Board of Health to pump out the septic system to avoid sewage overflows. We obtained a temporary restraining order and a preliminary injunction against the trailer park owner and its president compelling the owner to regularly pump out the septic system to avoid overflows and to cease using the failed leaching field. Commonwealth v. Heritage Mobile Home Park. Similarly, in an Environmental Strike Force case, we sued the owners and operators of a Westport restaurant for operating a failed septic system in violation of the Massachusetts Clean Waters Act and Title 5 of the State Environmental Code. Commonwealth v. Windward Food Service Co., Inc. d/b/a/ Moby Dick Wharf Restaurant. The septic system allegedly overflowed into the Westport River, causing the closure of sensitive shellfishing beds. In a consent judgment, the defendants agreed to pay \$40,000 in civil penalties, install new septic tanks, and to study and install a fully complying Title 5 septic system, or, if that proves infeasible, to install "tight tanks" as an alternative.

The Division obtained rulings in two additional water pollution cases. Commonwealth v. Alouette Associates (In this Title 5 case, the owners of a shopping plaza paid a \$30,000 penalty for allegedly allowing a failing septic system to dump raw sewage into a parking lot and agreed to pump the system once a day to prevent overflows); Commonwealth v. Town of Marshfield (The

court dismissed the town's counterclaim against the Commonwealth, ruling that the state's groundwater discharge requirements were not "unfunded local mandates" under Proposition 2 ½. Our motion for partial summary judgment is currently pending before the court).

C. Hazardous Materials

EPD brings lawsuits against responsible parties to remediate contamination caused by oil or hazardous materials, including litigation to recover costs incurred by the Commonwealth when it undertakes cleanup actions. In addition, EPD brings enforcement actions to require proper management, storage and disposal of hazardous wastes and to collect penalties for violations. In the last fiscal year, EPD handled the following major hazardous waste cases.

In United States and Commonwealth v. Charles George Trucking Co., the court ruled that the state and federal governments did not act arbitrarily or capriciously in selecting remedies for the Charles George Landfill superfund site. Once cost issues are resolved, the defendants will be ordered to pay the governments' unreimbursed cleanup costs associated with the remedies. In a Superfund case, Commonwealth v. Federal Pacific Electric Co., the Commonwealth and the United States sought \$40-80 million in reimbursement of clean-up costs from six former owners/operators of a manufacturing facility in Norwood which is allegedly contaminated with polychlorinated biphenyls ("PCBs"). In August 1995, the Court entered a consent decree resolving liability of the three defendants in the amount of \$40 million, to be paid out of the indemnification proceeds for which the Court had previously found the other defendants liable. The Court found the consent decree fair, reasonable, and consistent with the goals of CERCLA. In Commonwealth v. Cambium Corporation, we filed suit against Cambium, a casket manufacturing company, alleging that it violated G.L. c. 21C and endangered the public by piling drums of ignitable hazardous waste. We also alleged that Cambium violated the Massachusetts Clean Air Act by emitting volatile organic compounds that contribute to the depletion of the ozone layer. Cambium agreed to reduce its generation of air pollutants and hazardous wastes and to run an ad warning

other furniture manufacturers to obey environmental laws. Cambium will also pay a civil penalty of \$20,000 now, and up to \$40,000 in additional penalties if there are further violations over the next two years. The court granted the Commonwealth's request, in Commonwealth v. Sak Recycling Co., for a preliminary injunction requiring the owners and operators of a South Boston junkyard to take immediate steps to protect nearby residents and workers from alleged exposure to PCB contamination. The order prohibits ongoing operations at the yard, including sifting and screening of junk, and requires the repair and maintenance of the fence surrounding the site. In Commonwealth v. Creative Chemical, a G.L. c. 21, 21C, and 21E case, the defendants agreed to pay a \$75,000 penalty for their alleged illegal treatment of hazardous waste and disposal of highly acidic wastewater into the Town of Palmer sewer system. The defendants were required to perform an investigation and testing of their facility for any contamination. In another G.L. c. 21E case, Commonwealth v. Mobil Oil of Massachusetts, Inc., Mobil agreed to pay a \$150,000 penalty for its alleged failure to notify the Department of Environmental Protection of a potential imminent hazard condition caused by leaking underground storage tanks at its New Bedford gas station. A nearby residence suffered significant impacts from the fumes. The Commonwealth has filed for court approval of consent judgments in Commonwealth v. Tuttle resolving its claims against all defendants in this 21E cost recovery action. Under the terms of the settlement, the defendants agreed to pay approximately \$60,000 of the Commonwealth's costs, and not to oppose the execution of the Commonwealth's lien on the site. In an Environmental Strike Force case, Commonwealth v. Air Liquide America Corp., we alleged that a North Grafton gas-repackaging company, failed to notify DEP that it had released water contaminated with PCBs into soil at its facility. The judgment entered in this case requires \$25,000 in penalties, as well as the clean up of contaminated soil.

We also filed suit against the owner of a gasoline station in Rockport. Commonwealth v. John Beaudette Inc. The complaint seeks an injunction requiring the owner to comply with a

cleanup order issued by the Department of Environmental Protection, penalties for alleged violation of the order, and recovery of the Commonwealth's cleanup costs. Finally, under an agreement entered in Bankruptcy Court, Harrington & Richardson, a Gardner gun manufacturer, will pay \$600,000 towards the clean-up of a site that was allegedly contaminated by chemicals used in the manufacturing of firearms.

D. Wetlands

Among the wetlands cases resolved this fiscal year, Commonwealth of Massachusetts v. Wayne Williams involves the alleged illegal alteration of wetlands to construct commercial cranberry bogs, without obtaining an order of conditions under the Wetlands Protection Act. The court required the debtors/defendants to restore three acres of wetlands and the court also required the payment of a \$50,000 civil penalty, plus an additional \$25,000 in the event of failed performance under the order. In Commonwealth of Massachusetts v. Kenneth Chobot, jointly handled by CPAD and EPD, we obtained a \$109,000 default judgment for alleged illegal timber cutting in protected wetlands, and violations of G.L. c. 93A, the Consumer Protection Act. The judgment includes restitution for elderly consumers and civil penalties for consumer protection, wetlands protection, and timber harvesting violations. The judgment also enjoins the defendants from breaching their contracts and violating the state's environmental laws. In Commonwealth v. Blackstone-Chicago Corporation, we alleged that a real estate developer was responsible for wetlands damage due to erosion at its subdivisions in Northbridge and Uxbridge. Blackstone agreed to take steps to help restore the damaged wetlands, and to pay a civil penalty of \$25,000.

E. Solid Waste

We filed an action against the defendants for operating an alleged illegal solid waste dump in Brockton. Commonwealth v. Hercules Building Wrecking Co., Inc. The defendants consented to an interim order prohibiting them from accepting debris at the site and transferring assets. In Commonwealth v. Sam White & Sons, Inc., Coastal Energy Services contracted to

demolish the Cushing Hospital and subcontracted with MRP Site Development to dispose of the debris, consisting of wood, brick, and concrete. MRP allegedly dumped the debris in a gravel pit in Medway operated by Sam White, which is not licensed for refuse disposal. The three companies have agreed to pay fines totaling \$35,000 for illegal disposal of demolition debris.

Homart Development Co., the developer of the Natick Mall and Shoppers World in Framingham and Walsh Brothers, Inc., the general contractor at the Natick Mall, agreed to pay civil penalties of \$200,000 and \$50,000 respectively for alleged violations of the state Solid Waste and Clean Air Acts arising out of the removal and disposal of asbestos-containing material at the sites. Commonwealth v. Homart Development Co.

F. Pesticides

Commonwealth of Massachusetts v. Terminix: This case involved alleged unlawful applications of residential pesticides in violation of the Massachusetts Pesticide Control Act, including by failing to train the company's pesticide applicators. We obtained partial summary judgment and a judgment by consent, requiring immediate payment of \$146,950.

II. Clean State Initiative

A. Clean State Report to the Legislature

Pursuant to G.L. c. 12, § 11D, we filed a report to the Legislature evaluating the progress of the Clean State Program since its initiation nearly three years ago. Executive Order 350, which grew out of the Attorney General's concern that state agencies were not in compliance with the environmental laws, directed state agencies (authorities opted in) expeditiously to identify, prioritize and remediate environmental problems. Roughly 1300 problems were identified, 300 of which were classified as "priority matters" requiring correction by the end of FY 1997. The report examines the identification of problems, funding, quarterly reporting and progress and makes a number of recommendations for steps that should be taken.

B. Other Actions of EPD in Conjunction
With the Clean State Initiative

In our first judicial action taken under the Clean State Initiative, we filed a complaint, stipulation and order under which the MBTA agreed to take immediate measures to clean up alleged petroleum contamination at the Fellsway bus garage in Medford. Commonwealth v. Massachusetts Bay Transportation Authority: Leaks of thousands of gallons of diesel fuel and heating oil have occurred at the garage, resulting in contamination of ground water and surface water in the area.

The Attorney General, DCPO, and DEP forged an agreement to demolish the South Bay Incinerator and gave community groups an opportunity to participate in the process. The project was the result of a collaborative effort by the A.G.'s Office, U.S.E.P.A., the City of Boston, and a number of community groups.

I. Low Emissions Vehicle Litigation/Federal Clean Air Act

Over the last three years, we have been defending Massachusetts' right to adopt the California auto emission standards, both as a defendant in a suit in Massachusetts and as an amicus in a suit in New York. MVMA v. New York. The car companies' key argument has been that the federal Clean Air Act prohibits states from adopting the California emission standards without simultaneously mandating the special gasolines that California requires. According to the car companies, this would cause them to make production changes that would amount to a "third vehicle" prohibited by the Act. A federal District Court judge in New York initially invalidated the New York program on this basis, but later reversed course and ruled in New York's favor on summary judgment. On January 10, 1996, the Second Circuit upheld this ruling.

IV. Facility Siting and Licensing Proceedings

The Commonwealth intervenes in facility siting and licensing proceedings when it determines that intervention is necessary and appropriate to protect the public health or the

environment. In the past year, EPD has been involved in ongoing proceedings in opposition to the siting of several power plants.

In the past year, the Attorney General succeeded in defeating two proposals to build new, coal-fired power plants in southeastern Massachusetts. In the matters of: Eastern Energy Corporation and the Silver City Energy Limited Partnership, before the Energy Facilities Siting Board and the Supreme Judicial Court. The Attorney General opposed both plants because a large regional energy surplus showed that they were not needed, and because the plants would produce much dirtier air than other energy options. As a result of this effort, EPD obtained an agreement that stopped the development of the 300-megawatt coal-fired power plant proposed for New Bedford by the Eastern Energy Corp. ("EEC"), and that required the Silver City Energy Limited Partnership ("SCELP"), developers of a 150-megawatt silver coal-fired plant proposed for Taunton, to reduce significantly that plant's anticipated air emissions and energy prices.

A. Siting Reform

During the past year, the Attorney General's Office has actively and vigorously participated in the siting statute reform process embarked upon by the Energy Facilities Siting Board. We have participated in large group discussions designed to critique the EFSB's proposed model statute and to design one that better meets the needs of all competing interests as the Commonwealth moves into an era of competition in the electric industry. We have been engaged with all stakeholders and members of the legislature, in which various proposals have been floated for review.

B. Energy Issues

Early in 1996, EPD led a coalition of attorneys general from four northeastern states filing comments with both the Environmental Protection Agency and the Federal Energy Regulatory Commission. Our comments urged these federal agencies to require mitigation of air pollution as a condition for allowing electric restructuring. EPD was active throughout the year on the state

level as well. We sought to protect the environment throughout numerous "roundtable" discussions and negotiating sessions, and worked with other state agencies to reach a common position for the state government. We filed comments urging the Massachusetts Department of Public Utilities to restructure local electric generation in a way that reduces rather than increases harmful air pollution.

C. Appliance Standards

The Attorney General is leading an effort by the Attorneys General of Connecticut, Rhode Island, and Maine to support passage of federal appliance energy efficiency standards. If implemented, the new standards would, over the next twenty years, save consumers about \$20 billion in energy costs nationally and avoid the need to run eight 500-megawatt fossil fuel-burning power plants, thus reducing harmful air pollution.

V. Defensive Cases

One of the critical functions of the Attorney General's Office is the defense of lawsuits challenging the regulatory and enforcement actions of state environmental officials and agencies. These cases involve numerous challenges to state permitting decisions, as well as challenges to the legality of state environmental regulations. Hootstein v. Coxe (The court granted our motion for summary judgment in this action against the Secretary of the Executive Office of Environmental Affairs and Northfield Solid Waste Recovery, Inc., challenging the Secretary's decision to require no further environmental review of NSW's proposed solid waste and sludge recycling and composting facility). Haines v. Town of Amesbury, Appeals Court (We argued an appeal on behalf of DEP as intervener defending the Superior Court's decision to vacate a 1991 consent judgment and related orders that required Amesbury to remove and replace an allegedly defective weir, where compliance with the Consent Order would have required the Town to drastically lower the River's water level and would have caused severe harm to the Town's own water supply and 1.2 miles of wetlands); Papia v. Massachusetts Department of Environmental Protection and Town

of Andover Conservation Commission (In an action for judicial review pursuant to G.L. c. 30A, the court upheld DEP's denial of a wetlands permit to fill wetlands to construct a proposed subdivision in Andover); Nantucket Islands Land Bank v. Secretary of Executive Office of Environmental Affairs (In this action for review of the Secretary's decision that the Land Bank's proposal to expand a golf course into 30 acres of globally rare habitat was impermissible, we negotiated a settlement in which the Land Bank will draft a revised proposal for the Secretary's consideration. The revised proposal avoids the sensitive area almost entirely and includes proposals by the Land Bank for other environmentally beneficial projects on the island as further mitigation.); Conservation Law Foundation v. Secretary of Executive Office of Environmental Affairs (The court dismissed on jurisdictional grounds this challenge to the Secretary's decision permitting the MBTA to raise fares without first preparing an environmental impact report.); Conservation Law Foundation v. Boston Air Pollution Control Commission and Commissioner David Struhs, Department of Environmental Protection: (CLF brought suit against BAPCC and Commissioner Struhs in federal district court alleging violations of the Clean Air Act. We opposed CLF's motion for summary judgment against BAPCC. CLF contends that BAPCC violated the Boston Parking Freeze by issuing a permit to construct a parking lot in Chinatown).

VI. New Legislation

We actively supported the Rivers Bill, which would protect the Commonwealth's river banks from over-development and would help protect the rivers themselves from pollution. (The bill was subsequently enacted in large part due to our active role in final negotiations.) We also actively opposed various problematic audit privilege and takings bills.

VII. Speaking Engagements, Awards and Events

Assistant Attorney General Betsy Harper addressed a group of bankers/lenders in Pittsfield about the contamination, in Pittsfield and surrounding towns, allegedly caused by General Electric's release of PCBs into the environment and the potential liability of bankers and

lenders who foreclose on contaminated property. They also discussed the Brownfields Initiative and statutory exemptions to liability under G.L. c. 21E.

The Environmental Protection Division was invited by the Massachusetts Association of Conservation Commissions to speak at two workshops at MACC's annual meeting on March 9, 1996 at Holy Cross College in Worcester. We addressed workshops on wetlands enforcement and on agricultural use of conservation land. The sessions were well attended by town conservation commissioners and commission staff, environmental agency personnel, and other interested parties.

VIII. Other

On May 24, 1996, we issued a Covenant Not to Sue in an Administrative Consent Order to the Massachusetts Government Land Bank. In re: The Massachusetts Government Land Bank: The Land Bank is charged with the acquisition, operation, and redevelopment of Fort Devens. The Army transferred Fort Devens to the Land Bank on May 9, 1996. Fort Devens is allegedly contaminated with hazardous materials and is a federal facility under CERCLA. In order to facilitate the redevelopment of Fort Devens, we agreed to give the Land Bank a covenant outside of the Clean States Initiative. This agreement imposes certain cleanup obligations on both the Land Bank and its successors, in exchange for the covenant.

The Commonwealth along with other states alleged that the ads of the American Plastics Council ("APC"), part of APC's "Take Another Look at Plastics" ad campaign, was deceptive because of failure to put claims about the rate of plastics recycling in context of the current availability of such recycling to consumers. Environmental Marketing Multi-State Task Force - American Plastics Council Agreement: Multi-State Attorney General Task Force Settlement. APC trade association paid \$10,000 to each of the 11 participating Task Force states. APC also agreed to various restrictions on future environmental advertising.

During the fiscal year, the division also pursued the Brownfields Initiative. Our hazardous waste laws inadvertently place significant impediments on the reuse of contaminated land. As a result, previously developed, urban "brownfields" lie unused, while pristine farmland and other open space get developed. The Attorney General has been at the forefront of efforts to try to change this. Our office drafted legislative proposals that would provide significant liability relief to new developers of "brownfields" and we proposed a pilot program that would be targeted at the distressed areas most in need.

The Attorney General and attorneys general of 37 states and 11 governors called on President Clinton and Congressional leaders to oppose pending proposals that would weaken states' roles in environmental clean-ups of federal facilities and cut environmental restoration budgets. In the letter, the attorneys general state their support of streamlining and other reforms, but cautioned the Congress and the Clinton Administration not to compromise the health and safety of citizens.

IX. Significant Hearings, Amicus Briefs, etc.

We prepared an amicus brief supporting the respondents in Meghrig v. KFC Western, Inc., in the United States Supreme Court. The issue is whether a citizen can recover the costs incurred in responding to an imminent and substantial endangerment to health or the environment under the Citizens Suit provision of RCRA. We argued that restitution is available; 13 states joined us as amici.

We also filed an amicus brief on behalf of the plaintiffs, a group of citizens who own property within the floodplain of the Housatonic River, and in opposition to General Electric's motion for summary judgment. Church v. General Electric Co. We argued that the continual re-deposition of alleged PCB-contaminated sediments on plaintiffs property caused by the periodic flooding of the Housatonic constitutes a continuing nuisance under Massachusetts law, and plaintiffs' claims are therefore timely. The Commonwealth owns large tracts of land which are

also affected by this phenomenon, so we possess a direct interest in having the law develop in this fashion.

Two amicus briefs involved opposing strategic lawsuits against public participation (“SLAPP” suits). In Triandafilou v. DeMoulas, we filed an amicus brief in the Supreme Judicial Court arguing that a not-for-profit corporation is authorized to file a special motion to dismiss under the Anti-SLAPP Suit Act. In Baker v. Parsons, Superior Court, the defendant was sued for allegedly petitioning the Secretary to require environmental review of the plaintiff’s proposed pier project. The plaintiff filed a motion to dismiss this action under the new Anti-SLAPP suit law. We filed an amicus brief in support of that motion. The Court granted our motion as we urged it to do.

THE WESTERN MASSACHUSETTS DIVISION

The Western Massachusetts Division of the Office of the Attorney General, located in the State Office Building at 436 Dwight Street, Springfield, is responsible for legal matters arising in Berkshire, Franklin, Hampden, and Hampshire Counties. The Western Massachusetts Division is staffed by eleven assistant attorneys general, three civilian investigators, four paralegals, three Massachusetts State Police Officers, and additional support staff. One attorney and two investigators assigned to the Medicaid Fraud Unit also are part of the staff.

The Western Massachusetts Division, part of the Office of the Attorney General Executive Bureau. Assistant Attorneys General assigned to the Western Massachusetts Division defend the Commonwealth in administrative law, contract, eminent domain, civil rights, and torts cases. In fiscal year 1996, sixty one new "defensive cases" were opened and eighty seven were resolved. At the beginning of fiscal year 1996, there were one hundred twenty eight "defensive cases" open; at the end of fiscal year 1996, there were one hundred and two. These figures represent a thru-put rate of 125%.

In addition, the Western Massachusetts Division prosecutes pro-active civil rights, consumer protection, and criminal cases. This year, the consumer protection division succeeded in putting an unscrupulous charitable fundraising operation out of business and filed civil complaints against unlicensed home improvement contractors, automobile dealers, and others. The criminal bureau is involved in a joint investigation with the United State's Attorney's Office and has investigated and prosecuted consumer fraud, unemployment fraud, insurance fraud, and other white collar crimes.

One of the most significant changes to the Western Massachusetts Division this year was the implementation of an "Intake Unit." This unit handles and investigates consumer complaints and evaluates cases for possible criminal or civil action.

The Western Massachusetts Division will continue to provide the residents of western Massachusetts with access to their state government and will continue to provide state governmental agencies with the highest quality legal representation.

No. 95/96-1
June 12, 1996

Kathleen M. O'Toole, Secretary
Executive Office of Public Safety
One Ashburton Place, 21st Floor
Boston, MA 02108

Dear Secretary O'Toole:

You have requested my opinion whether the Statewide Emergency Telecommunications Board (the "Board") has authority, in implementing Enhanced 911 ("E-911") service, pursuant to G.L. c. 6A, §§ 18A-F (1994 ed.), to designate private safety agencies (i.e., privately owned and operated ambulance companies) as secondary public safety answering points ("PSAPs").¹ Your question arises because the statutory provision governing PSAPs expressly provides that public safety agencies (i.e., divisions of state or municipal government) shall serve as primary PSAPs; the statute is silent, however, as to whether public safety agencies similarly must serve as secondary PSAPs or whether private safety agencies can serve that function. For the reasons discussed below, it is my opinion that the relevant statute does not preclude the Board from approving private safety agencies as secondary PSAPs.

Pursuant to G.L. c. 6A, § 18B(b), the Board is responsible for coordinating and implementing E-911 service. Enhanced 911 is "a service consisting of telephone network features provided for users of the public telephone system enabling such users to reach a public safety answering point by dialing the digits 911. Such service directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the

¹ Secondary PSAPs receive E-911 calls only when they are transferred from the primary PSAP (which must be a public safety agency such as a police or fire department or other division of state or municipal government that provides emergency services) or on an alternative routing basis.

calls originate and provides the capability for automatic number identification and automatic location identification.” G.L. c. 6A, § 18A.

Each municipality within the Commonwealth that certifies to the Secretary of the Commonwealth that it accepts the provisions of St. 1990, c. 291, establishing the Board and E-911, “shall establish, staff, and operate, in conjunction with one or more other municipalities or by itself, a public safety answering point on a twenty-four hour a day, seven days a week basis, in a manner and according to a schedule to be approved by the board.” G.L. c. 6A, § 18D(a). Pursuant to G.L. c. 6A, § 18A, a public safety answering point is defined as “a facility assigned the responsibility of receiving 911 calls and, as appropriate, directly dispatching emergency response services or transferring or relaying emergency 911 calls to other public or private safety agencies”.² See also G.L. c. 6A, § 18C(a).

While the statute thus contemplates that the services ultimately provided in response to an E-911 call may be performed by either “public or private safety agencies,”³ it nonetheless requires that a “public safety agency” serve as the primary PSAP. In particular, G.L. c. 6A,

² The statute distinguishes between three types of public safety answering points or PSAPs: primary PSAPs, secondary PSAPs, and ringing PSAPs. A primary PSAP is distinguished from a secondary PSAP in that a primary PSAP “is the first point of reception of a 911 call,” while a secondary PSAP “receives 911 calls only when they are transferred from the primary public safety answering point or on an alternative routing basis when calls cannot be completed to the primary public safety answering point.” G.L. c. 6A, § 18A. Both primary and secondary PSAPs are equipped with automatic number identification and automatic location identification displays. “Automatic number identification” (“ANI”) is defined as an E-911 service capability that allows for the automatic display of the seven digit number used to place a 911 call, while “automatic location identification” (“ALI”) refers to an E-911 service capability that allows for the automatic display of information relating to the geographical location of the telephone used to place a 911 call. *Id.* Finally, a ringing PSAP does not have capability to receive ANI or ALI; a ringing PSAP is “equipped for receipt of voice communications only,” and it “receives 911 calls that are transferred from the primary public safety answering point.” *Id.*

³ A private safety agency is defined by statute as “any entity, except for a municipality or a public safety agency, providing emergency police, fire, ambulance or medical services.” G.L. c. 6A, § 18A. A public safety agency is defined as “a functional division of a municipality or the state” which provides the same services as are provided by a private safety agency. *Id.*

§ 18D, governing the statewide plan to be adopted by the Board for implementation of E-911, requires that the plan include "[a] designation within each enhanced 911 system, of the municipalities and the public safety agencies within such municipalities, to serve as the primary public safety answering points. In all cases, the recommendation for the primary public safety answering point locations shall be for existing public safety agencies. . . ." G.L. c. 6A, § 18D(c)(3)(emphasis added). The question you have raised, however, is whether a public safety agency must also serve as the secondary PSAP or whether a private safety agency may serve that function.

In contrast to the foregoing provisions governing primary PSAPs, the statute does not contain language specifically requiring public safety agencies to serve as secondary PSAPs. The provision governing requirements for the implementation plan adopted by the Board merely provides, with respect to secondary PSAPs, that "[t]he board shall also evaluate the need for secondary public safety answering points in municipalities which have requested them." G.L. c. 6A, § 18D(c)(3). The section governing the Board's powers and duties similarly provides that applications for secondary PSAPs shall be reviewed and approved by the Board. G.L. c. 6A, 18B(b).

I am aware of no case authority that sheds light on the question you have raised. However, interpreting statutory language itself, guided by general principles of statutory construction, I am of the view, for the reasons discussed below, that the statute does not preclude the Board from approving an application by a municipality for a private service agency to serve as a secondary PSAP. Two principles of statutory construction are of particular relevance here. First, where the Legislature "has employed specific language in one paragraph, but not in another, the language should not be implied where it is not present." Beeler v. Downey, 387 Mass. 609, 616 (1982). In addition, legislative intent should be ascertained from the "ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or

imperfection to be remedied and the main object to be accomplished” Board of Education v. Assessor of Worcester, 368 Mass. 511, 513 (1975) (citations omitted).

As noted above, the Legislature expressly provided that public safety agencies should serve as primary PSAPs. See G.L. c. 6A, § 18D(c)(3). The fact that the Legislature did not similarly specify that public safety agencies should serve as secondary PSAPs suggests the Legislature's intention that secondary PSAPs may be served by either public or private safety agencies. This interpretation is supported by the operational standards adopted by the Board for the E-911 system, set forth at 560 C.M.R. § 2.06 (1993). In particular, one standard, entitled "Non-Municipal Agencies Authorized as Public Safety Answering Points," provides that "[o]nly municipal public safety agencies or groups of municipalities may operate Enhanced 9-1-1 PSAPs or authorize Enhanced 9-1-1 PSAPs to be operated, with the approval of the Board." 560 C.M.R. § 2.06(l)(f)(emphasis added). The latter language suggests the Board's understanding that the statute does not preclude municipalities from designating "non-municipal" (*i.e.*, private) safety agencies as secondary or ringing PSAPs, with the Board's approval. The Board's latitude to approve private safety agencies as secondary PSAPs also is consistent with the Board's broad statutory authority to "coordinate and effect the implementation of enhanced 911, and administer its service in the commonwealth," G.L. c. 6A, § 18B(b), including the specific authority to review and approve applications for secondary PSAPs, G.L. c. 6A, § 18B(b), and to "evaluate the need for secondary public safety answering points." See G.L. c. 6A, § 18D(c)(3).

Moreover, considerations of public safety, which underlie G.L. c. 6A, §§ 18A-F, support a reading of the statute that would enable private safety agencies to serve as secondary PSAPs. In this regard, it is my understanding, based on information provided by your office and by the Board, that precluding private safety agencies from serving as secondary PSAPs and allowing them to serve only as ringing PSAPs could, in certain circumstances, lead to delays in the provision of emergency services to the person placing a 911 call. For example, where a 911 call placed to a

primary PSAP is transferred to a private ambulance company that has been designated only a ringing PSAP (not a secondary PSAP) and, thus, is not authorized to be equipped with ANI and ALI, if the caller were unable to provide necessary information concerning his or her telephone number or address (or if the private company inadvertently recorded the information incorrectly), the private ambulance company would be required to call back the primary PSAP to obtain the information needed to respond to the emergency, resulting in a delay in the provision of emergency services.⁴

On the other hand, if the private ambulance company itself were designated a secondary PSAP in the foregoing example, it would be equipped with ANI and ALI and that address/location information would be displayed instantaneously on the company's telephone screen. The important public safety interest in ensuring prompt responses to E-911 calls favors an interpretation of the statute that would enable private safety agencies to serve as secondary PSAPs.

In response to a concern expressed by the Board and others regarding the potential misuse of ANI and ALI information by private safety agencies designated to serve as secondary PSAPs, I note that the operational standards governing PSAPs appear to address that issue. In particular, 560 C.M.R. § 2.06(1)(j) provides that "[s]ubscriber information provided in accordance with the 9-1-1 system shall be used only for the purpose of responding to emergency calls or for use in any ensuing investigation or prosecution" and that PSAPs "must provide protection and confidentiality for ANI [automatic number identification] and ALI [automatic location identification] data." (This prohibition on misuse of subscriber information is repeated in G.L. c. 166, § 14A(d)(1994 ed.), governing the provision of E-911 service to PSAPs by telephone

⁴ I note that the operational standards adopted by the Board require that personnel responding to a call verify the location of the emergency with the 911 caller, see 560 C.M.R. § 2.06(3)(a)(3); and that the Board has indicated that it interprets the standard to require the primary PSAP to remain on the line until the ringing PSAP has verified the information. The foregoing standard, nevertheless, may not eliminate all potential delays, particularly in the situation where the ringing PSAP incorrectly records information concerning the location.

companies.) Finally, the same regulation requires that "[e]ach PSAP shall establish personnel security clearance standards that are acceptable to all public safety agencies served by the facility." In addition, the Board requires those municipalities that contract with private safety agencies and seek to designate those agencies as secondary PSAPs to incorporate protections into the terms of their contracts in order to address additional concerns about the possible misuse of subscriber information.⁵

In sum, based on my review of the relevant provisions of G.L. c. 6A, §§ 18A-F, I conclude that the statute does not preclude the Board from approving a private service agency as a secondary public safety answering point.

Sincerely,
Scott Harshbarger

⁵ The Board's "Required Contract Guidelines for Municipalities Utilizing Private EMS Providers," adopted in January, 1996, require municipalities to enter into written agreements with private ambulance providers in order to utilize and authorize such providers to receive transferred 911 voice calls and ANI/ALI data. The Guidelines provide, among other things, that the written agreements must require the private provider to comply with laws and regulations concerning site security and security of data, as well as other relevant Massachusetts general laws. The Guidelines further provide that the municipality and Board, in consultation with one another will have authority to terminate delivery of ANI/ALI data to a private provider for various reasons, including inappropriate use of that data.

